

MPUC Docket No. PL9/CN-07-464 (Certificate of Need)
MPUC Docket No. PL9/PPL-07-360 (Route)

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application of
Enbridge Pipelines (Southern Lights)
LLC for a Certificate of Need for the
Alberta Clipper Pipeline Project and the
Southern Lights Crude Oil Pipeline
Project

and

In the Matter of the Application of
Enbridge Pipelines (Southern Lights)
LLC for a Route Permit for the Alberta
Clipper Pipeline Project and the
Southern Lights Crude Oil Pipeline
Project

**SUMMARY OF TESTIMONY
AT THE PUBLIC HEARINGS,
FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATIONS**

Proceedings in the evidentiary and public hearings for the consolidated Certificate of Need and Route Permit dockets came before Administrative Law Judge Eric L. Lipman. Joint public hearings for both the Certificate of Need Docket and the Route Permit Docket were held in Clearwater, Kittson, Marshall, Red Lake, Pennington and Polk counties on November 27 and 28, 2007 and on January 17, 2008. An evidentiary hearing on the Certificate of Need Docket was held on January 22, 2008.

STATEMENT OF THE ISSUES

1. Has Enbridge Pipelines (Southern Lights) LLC ("Enbridge" or "Applicant") met the criteria set forth in Minnesota Statutes § 216B.243 and Minnesota Rules Chapter 7853 for a Certificate of Need for a crude oil pipeline?

The Administrative Law Judge concludes that the Applicant's has demonstrated the need for the proposed facilities.

2. Whether the Applicant has met the criteria for issuance of a oil pipeline routing permit (Routing Permit) set forth in Minn. Stat. § 216G.02, subd. 3, and Minn. R. 7852.1900, subp. 3?

The Administrative Law Judge concludes that the Applicant's application meets those criteria, and recommends that the Routing Permit be issued, subject to the conditions specified below.

3. Whether any of the proposed route alternatives minimize the human and environmental impacts associated with the proposed pipeline to a greater extent than the Applicant's Preferred Route?

The Administrative Law Judge concludes that the Applicant's Revised Preferred Route and Alignment minimizes the human and environmental impacts of pipeline installation, and recommends that the Minnesota Public Utilities issue a Routing Permit for Revised Preferred Route and Alignment, with the modifications discussed below.

Overview of the Proposed LSr Project

The proposed LSr Project includes the installation of a 313 mile pipeline between Cromer, Manitoba and Clearbrook, Minnesota. The last 108 miles of this pipeline will cross Minnesota in a diagonal fashion through portions of Kittson, Marshall, Pennington, Red Lake, Polk and Clearwater counties.

The LSr project is designed to transport "light" and "medium sour" crude oil from western Canada to the United States. The LSr Project will interconnect with the "Lakehead" Pipeline System and Minnesota Pipe Line ("MinnCan") system at the Enbridge facilities in Clearbrook, Minnesota.

If approved and constructed, the LSr Project will have an annualized capacity to transport 186,000 barrels of crude oil each day. With the addition of additional pumping infrastructure, which is not planned at this time, the capacity of a completed line could be increased to an average of 300,000 barrels of crude oil each day.

Enbridge asserts that demand for crude oil transportation on the Lakehead System has already increased steadily – from 1.35 million barrels-per-day in 2003 to 1.63 million barrels-per-day at the end of 2006.¹ Moreover, it argues that these increases in demand are part of larger upswing in national demand – demand that will peak at one-third more overall consumption of oil by 2030.²

Enbridge argues that the existing Lakehead System will be unable to meet this demand without expansion of its light-crude transportation capacity, generally,³ and in particular, the proposed LSr project.

The Lakehead System is only pipeline system that now connects Western Canadian oil production with the states of the Upper Midwest. Further, Enbridge notes

¹ Ex. 200, § 7853.0240 at 1.

² Ex. 200, § 7853.0240 at 2.

³ Ex. 200, § 7853.0240 at 5; see also, Exhibit D, Chart 6 to Ex. 200.

that the Lakehead System is the shortest pipeline route to connect to connect this production to Minnesota's refinery markets.

While acknowledging that the physical impacts of its proposed routing fall particularly upon those who live and work along the existing pipeline corridor, the Applicant maintains that the benefits to the energy system, and the wider region as a whole, makes the proposed upgrades to the existing route the best among the possible alternatives. The Applicant asserts that the LSr Project is needed to relieve "bottleneck" pressures that occur in the current pipeline system and to improve the "long-haul capacity of crude oil into the Midwest."⁴

The Commission will issue Orders on the Application for Certification of Need and the Routing Permit submitted by the Applicant after examination of this Report, the hearing transcripts, the filings submitted by the public, and all of the filings and arguments submitted by the Applicant, the Minnesota Department of Commerce, the Minnesota Center on Environmental Advocacy and other persons and entities interested in this matter.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF TESTIMONY AT THE PUBLIC HEARINGS

Pursuant to Minn. R. 7852.1700 and 7853.0200, the Administrative Law Judge conducted public hearings to elicit public comment regarding the need for, and routing of a crude oil pipeline from a state border crossing at a point in Kittson, County 2 miles northeast from Bowesmont, North Dakota to Clearbrook, Minnesota.

Over the course of six public hearings 20 members of the public offered testimony.⁵ Additionally, 12 sets of written comments were submitted before the close of the post-hearing comment period on February 8, 2008.

At the outset of the public hearings the Administrative Law Judge made introductory remarks, followed by short presentations from Bret Eknes of the Commission's staff, Karen Finstad Hammel, as counsel to the Minnesota Department of Commerce's Office of Energy Security, and a presentation from the Applicant. Following these presentations, members of the public asked questions of the panel members and shared their reactions to the material presented.

A summary of the testimony rendered at these evening hearings follows below:

⁴ See, e.g., Ex. 200, § 7853.0240 at 7; *accord*, Ex. 1 at § 4415.0170 at 1.

⁵ See, Summary of Written Comments, *infra*.

Kittson County Hearing – Kennedy, Minnesota

Remarks by Mr. Robert Patton, Land Use and Environmental Review Coordinator with the Minnesota Department of Agriculture: Mr. Patton testified as to the features of the Agricultural Mitigation Plan, the trench digging practices that will best help to preserve topsoil on farms in the Red River Valley and the role that Agricultural Monitors will play in ensuring compliance with the Agricultural Mitigation Plan.⁶

Remarks by Mr. Thomas Dowdle, Town Clerk of Davis Township: Mr. Dowdle decried what he considered to be the Applicant's poor earlier history of post-construction remediation of township roads. Mr. Dowdle had been urged by a Town Supervisor to attend the public hearing and to express these concerns.⁷ By way of a reply, representatives of Enbridge declared that poor remediation practice should not occur and pledged both to investigate the circumstances of the prior experience in Davis Township and that any road remediation on the LSr Project would satisfy Township officials.⁸

Remarks by Mr. Kelly Bengtson, of the Kittson County Highway Department: Mr. Bengtson echoed the earlier concerns of Mr. Dowdle, emphasizing that having local roads in good working condition was important to agricultural areas at harvest time. Additionally, Mr. Bengtson inquired of the panel as to the process for obtaining pipeline water crossing permits and the panel's prediction of the likely impact of the proposed pipeline on gasoline prices.⁹

Marshall County Hearing – Argyle, Minnesota

Remarks by Mr. Lon Aune, the Marshall County Engineer: Mr. Aune was complimentary of Enbridge's efforts to contact local officials and to engage in early planning with those officials on matters relating to the pipeline project. His testimony was principally to highlight matters which he believed Enbridge staff already understood – principally, the importance of maintaining road access to adjacent farms for agricultural workers, the benefits of early notice to county officials of area construction work and the benefit of beginning any boring under paved roads from a point outside of the road right-of-way.¹⁰

Remarks by Mr. Clifford McGregor, a landowner in Viking Township: Mr. McGregor testified as to the particular topography of his land, suggesting that the proposed alignment across his property might both be more difficult, and unduly disruptive to valuable gravel deposits, than locations that are east of the proposed

⁶ Kittson County Public Hearing Transcript, at 46-52. For the benefit of the members of the public in each locality, Mr. Patton generously made similar presentations at each of the public hearings.

⁷ *Id.*, at 52-55.

⁸ *Id.*, at 57-60.

⁹ *Id.*, at 54-56.

¹⁰ Marshall County Public Hearing Transcript, at 32-35.

alignment.¹¹ By way of reply, Paul Meneghini of Enbridge testified that the alignment was proposed to avoid a nearby calcareous fen, but that Enbridge staff would reexamine the topography of that location.¹²

Remarks by Mr. David Clark, a Marshall County Resident: Mr. Clark inquired into whether the accommodations his family had urged at Milepost 823 had been incorporated into the Applicant's proposed route. Assured that these features were a part of the Applicant's plan, he testified that he would "approve that route that they have proposed."¹³

Red Lake County Hearing – Oklee, Minnesota

Remarks by Ms. Iona Berry, a landowner in Oklee, Minnesota: Ms. Berry expressed her concern that the proposed routing of the LSr pipeline traveled far too close the homestead on the property and the family water supply. Likewise, Ms. Berry expressed consternation with the remediation efforts Enbridge contractors had made of the property following an earlier pipeline installation.¹⁴ The Berry property is located at Mile Post 886.5.

By way of reply Enbridge staff indicated due to the proximity of a railway line near this site, an existing shelter bed of trees and the Berry home, the Applicant proposes to "neck down" the separation between various pipelines to approximately 15 feet between pipes, in this location.¹⁵ Similarly, Enbridge also indicated that its construction space would be reduced from approximately 140 feet to approximately 80 feet at this location.¹⁶ Enbridge also noted its intention to install exclusion fencing so as to cabin any construction activity to the portions of the property that are covered by the easement agreement.¹⁷

Remarks by Mr. Cortland Kleven, the Red Lake County Engineer: Mr. Kleven was complimentary of Enbridge's efforts to contact local officials and to engage in early planning with those officials on matters relating to the pipeline project. His testimony focused upon the importance of transporting heavy loads by way of the higher-capacity trunk highways, the County's close adherence to MnDOT "spring load restrictions" on overload permits, and the benefits of early notice to county officials of area construction work.¹⁸

¹¹ *Id.*, at 36-41.

¹² *Id.*, at 38.

¹³ *Id.*, at 42-45.

¹⁴ Red Lake County Public Hearing Transcript, at 26-36.

¹⁵ *Id.*, at 28-29 and 59.

¹⁶ *Id.*, at 30.

¹⁷ *Id.*, at 35.

¹⁸ *Id.*, at 37-41.

Remarks by Mr. Leroy Carriere, a landowner in Brooks, Minnesota: Mr. Carriere made remarks on the importance of careful installation practice adjacent to agricultural tile systems and inquired about the expansion plans Enbridge has for its Portal line – a separate pipeline system from the LSr project.¹⁹

Remarks by Mr. Brent Strand, Red Lake County Commissioner: Commissioner Strand urged that any final release forms sent by Enbridge to landowners clearly state the contractual terms and be marked in such a way that these materials can be easily identified when they arrive by way of first class mail.²⁰

Pennington County Hearing – Thief River Falls, Minnesota

Remarks by Mr. Joel Kezar, a Pennington County landowner: In addition to some written remarks that were received as Exhibit A,²¹ Mr. Kezar expressed concern about the proliferation of pipelines across his property in recent years, and particularly to the south of the current configuration of pipelines, toward his home; the impact that pipeline installation has upon the shelterbed of trees around his home; and the impact pipeline installation will have upon his property's value.²²

By way of reply Enbridge staff indicated at the hearing that its plans – similar to that on the Berry property – were that the pipelines would “neck down” in the construction right-of-way on the Kezar farm. Further, construction staff would both preview with the Kezars the number of trees to be removed in the easement area as well as fence the perimeter of the construction zone so as to limit the impacts of the pipeline installation.²³ The record also includes a later, February 7, 2008 letter, in which Enbridge and the Kezars jointly urge a route alternative that runs west of the Kezar home.

Remarks by Mr. Mike Flaagan, Pennington County Engineer: Mr. Flaagan was complimentary of the work that Enbridge's local maintenance contractor had completed within the last year and yet had a number of inquiries of the Applicant's panel as to the impacts the LSr Project would have on local roads. Moreover, Mr. Flaagan highlighted that the County is exploring both placing restrictions on the maximum number of “open cuts” that may be made in roadways and requiring a performance bond to secure satisfactory completion of road repairs.²⁴

Remarks by Mr. Mark Thune, a Pennington County landowner: Mr. Thune inquired about the proposed alignment of the LSr pipeline as it crosses the Red Lake

¹⁹ *Id.*, at 42-51.

²⁰ *Id.*, at 51-55.

²¹ See, Exhibit A to Pennington County Public Hearing Transcript.

²² Pennington County Public Hearing Transcript, at 26-36.

²³ See, *id.*, at 36-37.

²⁴ *Id.*, at 92-98.

River and further expressed his concerns over the impact that pipeline installation will have upon the values of properties adjacent or near to the pipeline.²⁵

Polk County Hearing – Gully, Minnesota

Remarks by Mr. Cory Carlson, owner of Carlson Flying Service, an aerial application company: Mr. Carlson expressed concern that the proposed alignment of the pipeline, at Mile Post 896, along the northern portion of his property, would oblige burdensome relocation of existing buildings and significant restrictions on his company's ability to expand operations.²⁶

By way of reply Enbridge staff indicated that at this point of Mile Post 896, there are a number of other developments that the Applicant hoped to avoid – including a nearby railroad crossing – such that it preferred to again “neck down” the distance between proposed pipelines and to reduce workspace immediately adjacent to the Carlson home and hangar facilities.²⁷

Remarks by Mr. John Gunvalson, a landowner in Gonvick Township: Mr. Gunvalson indicated that the current location of the culvert on his property does not line up with the creek on his property.²⁸ The result is that significant rainfalls run directly across his field and wash away topsoil.²⁹ Mr. Gunvalson suggested that by relocating the culvert to the north side of the pipeline, during the construction process for the LSR pipeline, this problem would be eliminated.³⁰

By way of reply Enbridge staff indicated that relocating this culvert could be accomplished, if the necessary permits could be obtained from the authorities who have jurisdiction over the ditch.³¹

Remarks by Mr. Wayne Brekke, a landowner in Gully, Minnesota: Mr. Brekke highlighted some possible errors in the legal description accompanying the easement documents he received.³²

Clearwater County Hearing – Clearbrook, Minnesota

Remarks by Mr. Charles Aakre, a landowner in Clearbrook, Minnesota: Mr. Aakre, who owns a parcel at Mile Post 908, made several inquiries regarding the

²⁵ Pennington County Public Hearing Transcript, at 26-36.

²⁶ Polk County Public Hearing Transcript, at 26-32.

²⁷ *Id.*, at 37-38; *see also*, Ex. 13

²⁸ Polk County Public Hearing Transcript, at 44-45.

²⁹ *Id.*, at 45.

³⁰ *Id.*, at 47.

³¹ *Id.*, at 46-48. Enbridge subsequently advised OAH that permits will be required from Pine Lake Township and the Red Lake Watershed District for this work.

³² *Id.*, at 47.

Applicant's construction remediation practices and the inspection regimens in place to assure that property is properly remediated.³³

Remarks by Mr. Hiram Gustafson, a resident of Clearbrook, Minnesota: Mr. Gustafson, a former employee of Enbridge of 30 years, expressed concerns that landowners might not be properly apprised of the rights (and the value of those rights) that are transferred to Enbridge under easement agreements. Mr. Gustafson noted that it was his continuing concerns over the moral dimensions of the easement agreement process that spurred him to retire from Enbridge and to leave his position as a right-of-way agent for the company.³⁴ Believing that it would highlight his point, Mr. Gustafson urged a comparison of the relative property tax burdens between the company, and landowners along the pipeline route, over a 30 year period.³⁵

By way of reply, Enbridge representatives restated their company's commitment to landowner satisfaction and to the payment of market value for the property rights that are obtained by way of the pipeline easements.³⁶ Further, Enbridge witness Mark Sitek noted that Enbridge currently pays approximately \$10 million each year in property taxes in Minnesota – a figure that will more than double if the LSr and Alberta Clipper Projects are approved.³⁷

Remarks by Mr. James V. Thompson, a resident of Clearbrook County: Mr. Thompson, a neighbor of Mr. Aakre, expressed concern about the disparities in bargaining power between Enbridge and individual landowners as to the terms of easement agreements and the later route permit process.³⁸

Remarks by Mr. Curt Amundson, a landowner in Clearbrook, Minnesota: Mr. Amundson, who owns a parcel at Mile Post 911, inquired as to the company's practices for guarding against the spread of noxious weeds during the pipeline installation process.³⁹

Remarks by Mr. Dan Sauve, the Clearwater County Engineer: Mr. Sauve testified that spotted knapweed and leafy spurge, plants that appear on the noxious weed list, is "a major problem in this county." He urged that instances of these weeds be identified and vigorous measures be taken against their spread during pipeline construction.⁴⁰

³³ Clearwater County Public Hearing Transcript, at 27-35.

³⁴ *Id.*, at 35-45.

³⁵ *Id.*, at 44.

³⁶ *Id.*, at 35-45.

³⁷ *Id.*, at 43.

³⁸ *See, id.*, at 44-70.

³⁹ *Id.*, at 71-75.

⁴⁰ *Id.*, at 76.

SUMMARY OF THE WRITTEN COMMENTS

Five sets of written comments were received by the Administrative Law Judge before the close of the post-hearing comment period. A summary of the written comments follows below:

Mr. George Berbee of Cohasset, Minnesota, wrote to express concern over the breadth of the proposed 500 route width – a matter that he regards as adding to unnecessarily large spacing between adjacent pipelines and having the effect of unreasonably foreclosing other, later development opportunities for landowners. He wrote to “illustrate the problem” and “bring this issue to the attention of all people involved before a precedent is set.”

Mr. Donald Berry of Oklee, Minnesota, wrote to express concern over the scope of health and safety risks that he is asked to endure under the proposed alignment. Additionally, Mr. Berry describes how certain remediation-related pledges to him were not fulfilled following the installation of an earlier pipeline.

Mr. Donovan Dyrdal of Thief River Falls, Minnesota, submitted a copy of comments that he earlier had sent to officials of the U.S. Department of State in the parallel Presidential International Border Crossing Permit proceedings. In those comments he detailed how the installation of an earlier set of pipelines has impeded his ability to obtain proper drainage on the adjacent land. Asserting that “Enbridge has not kept its word in the spirit of the original contracts,” Mr. Dyrdal submits that remediation costs that should be borne by the consumers of petroleum products have, in fact, been unfairly placed on to host landowners along the pipeline route.

Mr. Glenn Johnson of Warren, Minnesota, wrote to urge Enbridge to bury the proposed pipeline deeper alongside his property in River Falls Township. Mr. Johnson commented that a lower depth would better shield the installed pipeline from later being struck by tillage or ditch digging equipment.

Mr. Jeff Nelson of Stephen, Minnesota, submitted two letters, each of which detail earlier lapses in Enbridge’s remediation efforts. While Mr. Nelson is complimentary of Enbridge’s remediation work following a pipeline installation in 1995, he notes that the company’s failure to properly restore land following a 1998 installation wrongfully pressed these remediation costs on to the township and local landowners.

Ms. Alice Peterson of Argyle, Minnesota, submitted three letters in which she questioned the relative burdens and benefits of the proposed pipeline. In each, Ms. Peterson expressed skepticism that the burdens which accompany a new line – in terms of safety risks, impacts to shelterbeds and impacts to topsoil – were justifiable in relation to what she believes to be potentially modest benefits – in terms of stability in oil prices or job opportunities for Marshall County residents.

Written Comments from the Minnesota Center on Environmental Advocacy. Before MCEA was granted intervenor status in the parallel Alberta Clipper proceeding,

and *amicus curiae* status in the LSR proceeding,⁴¹ it made several submissions of written in December of 2007 and January of 2008. The record includes filings that address state regulatory issues as well as complete copies of the materials that MCEA submitted to reviewing authorities at the United States Department of State.⁴² At the core of this detailed set of materials, MCEA argues that, in the context of the network of Enbridge pipelines, the proposed projects “have no reason to be built if [oil from the tar sands region of Western Canada is] not going to be refined and burned in the U.S.”⁴³ The prospect that tar sands synthetic crude oil will be refined and burned in the United States is particularly worrisome to MCEA. MCEA asserts that the process for extracting tar sands oil results in far higher amounts “fugitive emissions” of greenhouse gases being released, in comparison to processes for producing conventional crude oil.⁴⁴ Accordingly, MCEA argues that development of tar sands oil will worsen the Midwest’s record on the production of greenhouse gasses, counter regional efforts to naturally sequester carbon and undermine our state’s goals to reduce greenhouse gas emissions. Concludes MCEA, the “magnitude of the environmental impact and damage from exploitation of the tar sands cannot be overstated.”

Written Comments from the Minnesota Department of Agriculture: In written comments, Robert Patton, Land Use and Environmental Review Coordinator of the Department’s Agricultural Development and Financial Assistance Division, noted that while Department officials and Enbridge staff “were able to agree on nearly all of the changes to the [Agriculture Mitigation Plan],” there was “one provision about which we were unable to come agreement.” Mr. Patton explained that Section 25 of the AMP provides that later “global changes to the AMP that are requested by Enbridge, the Landowners, the Tenants or the Agriculture Monitors must be reviewed and approved by [the Minnesota Department of Agriculture]” While acknowledging the desirability of having flexibility in the AMP to account for later occurring circumstances, the MDA asserts that the rightful authority to approve such modifications lies with the Commission, and not with it.

Written Comments from the Minnesota Department of Natural Resources: In written comments, Matthew Langan, Environmental Planner of the Department’s Environmental Review Unit, outlined a number of concerns with respect to the proposed pipeline routing plan. He urged the Commission to impose a rigorous and continuing set of controls over the project so as to mitigate foreseeable impacts to humans and the environment. Specifically, Mr. Langan suggested measures for the “entirety of the pipeline project” relating to seven distinct topics – namely, clear regulatory controls

⁴¹ See, *Fourth Prehearing Order*, OAH Docket No. 8-2500-19094-2, at 2 (February 11, 2008).

⁴² Compare generally, Executive Order 13337, 69 Fed. Reg. 25299 (May 5, 2004) (Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States) (“if the Secretary of State finds that issuance of a permit to the applicant would serve the national interest, the Secretary shall prepare a permit, in such form and with such terms and conditions as the national interest may in the Secretary’s judgment require”).

⁴³ See, *MCEA Written Comments*, at 5 (December 14, 2007).

⁴⁴ *Id.*, at 6.

regarding combating anthrax, obtaining adjustments in the pipeline center line, crossing of sensitive areas, crossing forested river corridors, undertaking winter construction, proper Horizontal Directional Drill practice and avoiding spills of Bentonite into nearby streams.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. INTRODUCTION

A. The Parties and Participants

1. The Applicant is Enbridge Pipelines (Southern Lights) L.L.C. (hereinafter referred to as “Applicant” or “Enbridge”), a limited liability company organized under the laws of the state of Delaware.

2. The parent company to Enbridge Pipelines (Southern Lights) L.L.C is Enbridge Energy Company, Inc. Enbridge Energy Company, Inc. is a Delaware corporation and a wholly owned subsidiary of Enbridge Pipelines, Inc. Enbridge Pipelines, Inc. is a corporation that is organized under the laws of Canada.⁴⁵

3. Enbridge has international operations and is involved in the natural gas transmission business. Enbridge’s primary U.S. business address is 1100 Louisiana, Suite 3300, Houston, Texas 77002.⁴⁶

4. Enbridge is a common-carrier of crude petroleum. As such, its rates, tariffs and accounting practices are subject to the authority of the Federal Energy Regulatory Commission (“FERC”).⁴⁷

5. Together, the affiliates of Enbridge own and operate the largest natural gas distribution network in Canada. Enbridge affiliated companies employ approximately 5,000 people in the United States, Canada, and South America.⁴⁸

B. Procedural History

6. Enbridge filed an Application for a Pipeline Routing Permit for a Crude Oil Pipeline on April 20, 2007 for the LSr Project (the “LSr PRP Application”) with the Minnesota Public Utilities Commission (“PUC” or “Commission”). The LSr PRP Application was assigned PUC Docket No. PL9/PPL-07-360.

⁴⁵ Ex. 200, § 7853.0230 at 1.

⁴⁶ *Id.*

⁴⁷ Ex. 200, § 7853.0530 at 1.

⁴⁸ Ex. 200, § 7853.0230 at 1-2.

7. On April 24, 2007 Enbridge filed an Application for a Certificate of Need for a Crude Oil Pipeline for the LSr Project (the “LSr CON Application”) with the PUC. The LSr CON Application was assigned PUC Docket No. PL9/CN-07-464.

8. On April 30, 2007 the Commission sought comments on the completeness of the LSr CON Application.

9. Following the receipt of comments on the application, on July 12, 2007, the Commission accepted the LSr CON and PRP Applications.⁴⁹

10. On July 27, 2007 the PUC issued an Order Accepting Application, Initiating Full Review, Referring to Office of Administrative Hearings and Order and Notice of Hearing for the LSr PRP Application under Docket No. PL9/PPL-07-360.⁵⁰ Among other items, the Commission referred the LSr PRP Application to the Office of Administrative Hearings (“OAH”);⁵¹ directed that a contested case hearing under Minn. Stat. Ch. 14 and Minn. R. Ch. 1405 be held on the LSr PRP Application;⁵² and noted the nine-month time frame for consideration of the Application set out in Minn. R. 4415.0045.⁵³

11. Also on July 27, 2007 the PUC issued an Order Accepting Application as Substantially Complete, Referring Matter to Office of Administrative Hearings and Issuing Notice and Order for Hearing for the LSr CON Application under Docket No. PL9/CN-07-464.⁵⁴ Among other items, the Commission’s July 27, 2007 Order, noted that Minn. Stat. § 216B.243, subd. 5 places a 12-month restriction on the time for the PUC to act on the LSr CON Application;⁵⁵ directed Enbridge to work with PUC staff to develop notice materials to individuals and entities listed in Minn. R. 7829.2550, subparts 3 and 4;⁵⁶ directed any party that wished to make an appearance at the hearing to file a notice of appearance within 20 days of the Order;⁵⁷ and directed the DOC to study the issues and indicate its position on the reasonableness of granting a Certificate of Need to Enbridge.⁵⁸

12. On July 27, 2007 the DOC issued a document titled “Notice of Pipeline Routing Permit Application Acceptance and Public Information Meetings on the

⁴⁹ Ex. 202 at 2, 7; Ex. 3 at 2, 7.

⁵⁰ Ex. 3.

⁵¹ Ex. 3 at 2, 7.

⁵² Ex. 3 at 3.

⁵³ *Id.*

⁵⁴ Ex. 202.

⁵⁵ Ex. 202 at 6.

⁵⁶ Ex. 202 at 3, 7.

⁵⁷ Ex. 202 at 7.

⁵⁸ *Id.*

Enbridge Pipeline Projects.” This nine-page notice document provided an overview of the LSr Project, described some of the Commission’s procedures for reviewing the application and listed the dates, times, and locations of twelve public information meetings.⁵⁹

13. The official notice and cover letter were sent by certified mail on July 30, 2007 to all landowners along the proposed route that Enbridge was able to identify as being reasonably likely to be affected by the Projects. A map of the proposed route, a cover letter from Enbridge, and Notices of Intent from the United States Department of State (“USDOS”) accompanied the mailing to landowners.⁶⁰ The same notice documents and copies of the LSr CON and PRP Applications were also mailed to 23 public libraries in communities along the proposed route.⁶¹

14. On July 30, 2007, similar notice packets were sent to tribal governments, and to the governments of towns, statutory cities, home rule charter cities and counties reasonably likely to be affected by the proposed Projects. The packets were sent in accordance with the Commission’s July 27, 2007 Order and the requirements of Minn. R. 7829.2550 (3) (C).⁶²

15. Also on July 30, 2007, the *Minnesota Environmental Quality Monitor* published a seven-page document titled “Notice of Pipeline Routing Permit Application Acceptance and Public Information Meetings on the Enbridge Pipeline Projects.” This document provided information regarding the nature of the LSr and Alberta Clipper CON and PRP Applications and the opportunities for public involvement in the review process.⁶³

16. The official notice and a map depicting the proposed route for the Projects were published in 34 papers of general circulation between August 1 and August 10, 2007.⁶⁴

17. On August 1, a similar packet of information – including the July 27 notice document, a cover letter, a map of the proposed route, the USDOS Notices of Intent, and a CD-ROM of application materials – was sent by certified mail to 126 public officials. The mailings were made pursuant to Minn. R. 4415.0106.⁶⁵

⁵⁹ Ex. 400.

⁶⁰ Ex. 401.

⁶¹ Ex. 402.

⁶² Ex. 404.

⁶³ Ex. 502.

⁶⁴ Ex. 405.

⁶⁵ Ex. 403

18. The first in a series of prehearing conferences was held on August 7, 2007 at the Commission offices; with the LSr, Alberta Clipper, and Southern Lights Diluent Projects all being presented under OAH Docket No. 8-2500-19094-2.⁶⁶

19. Public information meetings were held between August 13 and 23, 2007 in Kittson, Marshall, Pennington, Red Lake, Polk, and Clearwater counties.⁶⁷ Staff from the DOC took the leading role in the information meetings, answering questions from landowners, local governmental officials, and other interested parties. Representatives of USDOS were also present at the information meetings and provided information regarding the federal environmental review now underway. A federal environmental review is required for issuance of a Presidential International Border Crossing Permit. Likewise, representatives of Enbridge were present at these meetings and responded to questions regarding the need for the project, its environmental impact, likely routing, and the construction process.

20. On September 14, 2007, Enbridge submitted direct testimony of witnesses Mark Sitek, Denise Hamsher, Paul Meneghini, Tim Andersen, Jerri Anderson, Paul Eberth, Mike Harris, and Paul Norgren in the LSr CON proceeding.⁶⁸

21. On October 5, 2007, DOC Witnesses Adam J. Heinen and Brian J. Minder filed direct testimony and exhibits in the LSr Certificate of Need proceeding.⁶⁹

22. Enbridge filed its Revised Preferred Route and Alignment on October 10, 2007.⁷⁰

23. The Revised Preferred Route and Alignment requested a 500-foot route width for the LSr Project. In its application materials Enbridge asserted that the requested width would give it needed flexibility to work with landowners and regulatory agencies to find the most advantageous alignment of the LSr Project line within the easement area.

24. Also on October 10, 2007, Enbridge also filed nine route alternatives. Enbridge asserted that these modifications improved the constructability of the project, reduced its impact to the natural environment and addressed a number of concerns raised by landowners.⁷¹

⁶⁶ First Prehearing Order, OAH Docket No. 8-2500-19094-2 at 1 (August 23, 2007).

⁶⁷ Additional public information meetings will be held for the companion Alberta Clipper and Southern Lights Diluent Projects – both of which are proposed to extend southeast of Clearbrook, Minnesota.

⁶⁸ Exs. 203, 204, 205, 206.

⁶⁹ Exs. 207, 208.

⁷⁰ Ex. 5.

⁷¹ Ex. 4.

25. The Commission met on November 1, 2007, to consider the Revised Preferred Route and Alignment and Route Alternatives. The Commission voted to accept both filings at this meeting.

26. On November 5, 2007, the *Minnesota Environmental Quality Monitor* published a seven-page document titled “Notice of Public Meetings and Public Hearings Before the Minnesota Public Utilities Commission Regarding: I. [CON] Applications for the LSr, Alberta Clipper and Southern Lights Diluent Projects . . . II. Applications for [PRP’s] for the LSr, Alberta Clipper And Southern Lights Diluent Projects” This notice discussed the LSr and Alberta Clipper CON and PRP Applications, listed the public hearing details and described how members of the public could participate in the review process.⁷²

27. On November 9, 2007, eight Enbridge witnesses filed direct testimony for the LSr PRP Application.⁷³

28. On November 9, 2007, Enbridge filed its Comparative Environmental Analysis for the Route Alternatives filed on October 10, 2007.⁷⁴ The Comparative Environmental Analysis was approved for release by the DOC.⁷⁵ This document compared the Route Alternatives to the route originally described in the LSr PRP Application.⁷⁶

29. Public hearings were held on November 26 and 27, 2007, in Kittson, Marshall, Pennington and Red Lake counties.

30. Meetings in Polk and Clearwater counties, originally scheduled for November 29, were postponed following an explosion at Enbridge’s Clearbrook, Minnesota facility on the evening of November 28, 2007. So as to permit an opportunity for senior Enbridge personnel who were members of the applicant panel, and called away to respond to the explosion, to participate in the hearings, the public hearings for Polk and Clearwater counties were rescheduled to January 17, 2008.

31. On November 30, 2007, the PUC issued an Order accepting the Revised Preferred Route and Alignment and Route Alternatives for the LSr Project.

32. On December 21, 2007, Enbridge witness Mark Sitek filed rebuttal testimony in the LSr CON proceedings. This testimony provided the Applicant’s response to the testimony of DOC witnesses and corrected information regarding tax benefits to counties that was contained in the LSr Applications.

⁷² Ex. 501.

⁷³ Exhibits 7, 8, 9, 10.

⁷⁴ Ex. 6.

⁷⁵ *Transmittal* Letter, Ex. 6 at ii.

⁷⁶ See, Ex. 6.

33. On January 2, 2008, notice of the rescheduled public hearings in Polk and Clearwater counties was sent via certified mail to landowners in those counties along the proposed pipeline route. Further, local elected officials and government agencies received a revised official notice document, which was also published in six local newspapers of general circulation. The official notice included a revised date for the deadline for the receipt of public comments of 4:30 p.m. on Monday, January 28, 2008.

34. On January 4, 2008, Adam J. Heinen and Brian J. Minder, witnesses for the Department of Commerce, completed the filing of all testimony in the LSr CON matter by filing written surrebuttal testimony. Mr. Heinen's surrebuttal testimony included an updated review of the future economic demand for the type of crude oil that will be transported by the proposed projects.

35. On January 9, 2008, the Minnesota Center for Environmental Advocacy filed a Petition to intervene in all PUC dockets under review in this proceeding.

36. Public hearings were held on January 17, 2007 in Polk and Clearwater counties. A third prehearing conference was also held on that date.

37. The Contested Case Hearing for the LSr CON Application was held on January 22, 2008.

38. Proceedings in the contested case followed oral argument from counsel on the Petition for Intervention from the Minnesota Center for Environmental Advocacy ("MCEA"). Noting that the Petition was filed 107 days after the deadline for intervention as a party in the LSr CON docket, and 34 days after the deadline for intervention in the LSr PRP docket, the Administrative Law Judge ruled that MCEA would be permitted to brief the issues presented by the LSr project applications as *amicus curiae*.⁷⁷

39. A formal order denying MCEA party status in the LSr Project proceedings followed on February 11, 2008.⁷⁸

40. Availing herself of rights extended to all members of the public,⁷⁹ counsel for MCEA questioned Department witnesses, Adam J. Heinen and Bryan J. Minder, at the contested case hearing on January 22, 2007.⁸⁰

C. Operational Details of the LSr Project

41. Enbridge and its corporate affiliates operate the longest crude oil and liquids pipeline system in the world. This system originates in Canada and extends into

⁷⁷ See, Minn. R. 1400.6200 (3)(A) (2007).

⁷⁸ See, *Fourth Prehearing Order*, OAH Docket No. 8-2500-19094-2, at 2.

⁷⁹ Compare generally, Minn. R. 1400.6200 (5) and 1405.0800 (C) (2007).

⁸⁰ Transcript of the January 22, 2007 Contested Case Hearing at 31-33, 69

the United States. The Canadian portion of this network of crude oil pipelines is known as the “Enbridge Mainline System.”⁸¹

42. The portion of this system in the United States includes approximately 3,300 miles of pipeline – extending from Neche, North Dakota, around the Great Lakes through the Upper Peninsula and Chicago, terminating at the Canadian border near St. Clair, Michigan. This system is known as the “Lakehead System” and has been in operation since 1950.⁸²

43. The proposed LSr Project is an approximately 313 mile long 20-inch outer-diameter crude oil pipeline between Cromer, Manitoba and Clearbrook, Minnesota. Approximately 108 miles of the LSr Project will be located in Minnesota. In Minnesota, the LSr project will cross Kittson, Marshall, Pennington, Red Lake, Polk, and Clearwater counties.⁸³

44. The LSr project is designed to transport crude oil from Western Canada to the United States in order to help alleviate forecasted bottlenecks in capacity in the Enbridge Mainline System.⁸⁴ The LSr Project will interconnect with the non-affiliated Minnesota Pipe Line (commonly known as the MinnCan Project) at the Clearbrook facility in Clearbrook, Minnesota.⁸⁵ The LSr Project will also have the capability of supplying other downstream refineries via its connection with the Lakehead System at Clearbrook, Minnesota.⁸⁶

45. The LSr Pipeline is designed to transport light and medium density crude oil,⁸⁷ although the facilities could be used to transport other types of oil.⁸⁸

46. Currently, Enbridge injects segregated batches of light and medium density crude oil from Cromer, Manitoba, through the Enbridge Mainline System.⁸⁹ Batch segregation of this type of crude oil is required because the high sulfur content of this product.⁹⁰ During the segregation and batch injection process, however, the movement of light density crude oil, and other types of oil, from Alberta to Cromer does

⁸¹ Ex. 200, § 7853.0230 at 3 n.1.

⁸² Ex. 200, § 7853.0230 at 2.

⁸³ Ex. 200, § 7853.0230 at 2-3.

⁸⁴ Ex. 200, § 7853.0240 at 1.

⁸⁵ Ex. 200, §§ 7853.0240 at 1; 7853.0510 at 7.

⁸⁶ Ex. 200, § 7853.0510 at 7.

⁸⁷ Contested Case Hearing Transcript, at 15 (January 28, 2007).

⁸⁸ *Id.* at 16.

⁸⁹ Ex. 1, § 4415.0170 at 1.

⁹⁰ Ex. 200, § 7853.0240 at 1; Ex. 203 at 9.

not occur.⁹¹ And, because those processes are suspended during batch injection, Enbridge argues that the overall capacity of the pipeline system is reduced.⁹²

47. Under Enbridge's LSr proposal, transportation of these (now segregated) batches of light and medium density crude oil will occur along their own dedicated pipeline.⁹³ Further, from the vantage point of other expansion projects that it envisions over the course of the next decade,⁹⁴ Enbridge asserts that the LSr Project will help to relieve "bottlenecks" in capacity that it projects for this expanded system.⁹⁵

48. The LSr Project will have an Annual Capacity, defined as the average sustainable rate over a year, of 186,000 barrels-per-day ("bpd"). The maximum capacity of the LSr Project is 300,000 bpd – but the Applicant asserts that such a transport capacity would first require the addition of new pumping stations along the pipeline route. The pumping stations that would be needed to meet this maximum capacity are not planned at this time.⁹⁶

49. The LSr Project will utilize the facilities of two existing pumping stations. The first station is located near Donaldson, Minnesota, approximately 40 miles from the Canadian border. The second pumping station is located in Plummer, Minnesota – at a point 63 miles southeast from the Donaldson Station and 32 miles northwest of the Clearbrook terminal.⁹⁷

50. The total construction cost of the portion of the LSr Project that is located within Minnesota is estimated to be \$125.5 million. While the functional life of the pipeline infrastructure is indefinite, the economic life of the project, based upon a regular depreciation schedule, is 25 years.⁹⁸

51. If the project is approved, Enbridge anticipates beginning construction in the spring of 2008, with an expected operational date of December 31, 2008.⁹⁹

⁹¹ Ex. 1, § 4415.0170 at 1.

⁹² *Id.*

⁹³ Ex. 200, § 7853.0240 at 1; Ex. 203 at 9.

⁹⁴ See, MPUC Dockets PL9/CN-07-465, PPL-07-361.

⁹⁵ Ex. 200, § 7853.0240 at 7.

⁹⁶ Ex. 200, § 7853.0230 at 3-5.

⁹⁷ Ex. 200. § 7853.0530 at 2.

⁹⁸ Ex. 200, § 7853.0540 at 3.

⁹⁹ *Id.*

II. CERTIFICATE OF NEED

A. Projections of Future Energy Demand

52. The United States Department of Energy's Energy Information Agency (EIA) projects that worldwide demand for oil will increase over the next 25 years from 83 million barrels-per-day to between 105 and 134 million barrels-per-day by 2030. Global demand will increase petroleum prices as competition for a finite resource increases.¹⁰⁰

53. According to the Energy Information Administration's 2007 Annual Energy Outlook, oil consumption in the United States will increase by one-third to approximately 27.6 million barrels-per-day by the year 2030.¹⁰¹

54. Petroleum demand in the West North Central Region, a group of seven states that includes Minnesota, is likewise projected to rise.¹⁰²

55. The Minnesota State Demographic Center predicts that the population of Minnesota will grow by 20.6 percent from 2005 to 2030, a period of 25 years.¹⁰³

56. Refineries in Minnesota and the surrounding region have announced plans to expand to meet future demand for refined petroleum products. For example, the Pine Bend refinery in Rosemount, Minnesota is expected to complete a 50,000 barrel-per-day expansion of refining capacity in the fall of 2007.¹⁰⁴ Similarly, the Murphy Oil refinery has announced that it is exploring the possibility of expanding its refinery capacity in Superior, Wisconsin.¹⁰⁵

57. The Enbridge Lakehead System currently supplies approximately 70 to 80 percent of the petroleum refined in Minnesota.¹⁰⁶ Minnesota's two refineries, Flint Hills in Rosemount and Marathon Ashland in St. Paul Park, supply roughly 65 to 70 percent of all the gasoline consumed in Minnesota. These refineries are supplied in part by the recently-expanded Minnesota Pipe Line that connects to the Enbridge Lakehead System at Clearbrook, Minnesota.¹⁰⁷ The Lakehead System also directly supplies all of the oil used by the Murphy Oil refinery at Superior, Wisconsin. The Murphy Oil facility produces between five and ten percent of all gasoline consumed in Minnesota.¹⁰⁸

¹⁰⁰ Ex. 208 at 35, 37.

¹⁰¹ Ex. 200, § 7853.0240 at 2.

¹⁰² Ex. 208 at 19, 21 and 24.

¹⁰³ Ex. 208 at 20-21.

¹⁰⁴ Ex. 208 at 15; *compare also*, Ex. 203 at 16.

¹⁰⁵ Ex. 208 at 15.

¹⁰⁶ Ex. 208 at 17, n. 13.

¹⁰⁷ Ex. 208 at 14, n. 5; Ex. 200, § 7853.0510 at 7.

¹⁰⁸ Ex. 208 at 14, n. 5; Ex. 200, § 7853.0510 at 7; Ex. 203 at 10.

Enbridge therefore supplies the products that are used to produce the majority of the gasoline that is consumed in Minnesota.

58. While domestic demand for crude oil is projected to rise, in Minnesota and across the nation,¹⁰⁹ the amount of U.S. onshore production of crude oil is expected to continue its decline in the coming years.¹¹⁰

59. The DOC concluded that consumption of petroleum in Minnesota will follow population increases, and in similar amounts, over the same time period – thereby increasing the pressures on the petroleum market in Minnesota.¹¹¹ Additionally, following its review of petroleum demand forecasts, population trends, and crude oil production forecasts, the DOC concluded that demand for refined petroleum products in Minnesota and the surrounding region is expected to rise over the economic life of the LSr Project.¹¹²

B. Projections of the Impact of Conservation Measures on Demand

60. Enbridge does not produce, refine or market oil.¹¹³ Instead, Enbridge is a common carrier of petroleum products.¹¹⁴ As a common carrier, Enbridge accepts nominations from shippers, subject to the terms of an earlier FERC-approved tariff, to transport crude oil.¹¹⁵

61. Enbridge's conservation programs are limited to internal corporate efforts to reduce the amount of resources that its operations consume. As a transportation company, it does not have a conservation program that impacts or influences the broader demand for petroleum products.¹¹⁶

62. A "preliminary version" of the climate change action plan required by Minn. Stat. § 216H.02 was submitted to the Legislature on February 1, 2008.¹¹⁷ In general, the preliminary plan recommends pursuing the hoped-for reductions in greenhouse gas

¹⁰⁹ See, Note 100 *supra*.

¹¹⁰ Ex 200, § 7853.0240 at 4-6.

¹¹¹ Ex. 208 at 20-23.

¹¹² Ex. 208 at 38; see *also*, Contested Case Hearing Transcript at 69, 86-88 and 98.

¹¹³ Contested Case Hearing Transcript at 25.

¹¹⁴ Ex. 200, § 7853.0530 at 1-2.

¹¹⁵ Ex. 200, § 7853.0530 at 1-2; Contested Case Hearing Transcript at 24-25.

¹¹⁶ Ex. 200, § 7853.0260 at 1.

¹¹⁷ See, Letter of Director Edward Garvey and Commissioner Brad Moore (February 1, 2008) (http://www.state.mn.us/mn/externalDocs/Commerce/Letter_for_preliminary_climate_change_action_plan_020508104727_MPCA-MDC%202-1-08.pdf).

emissions through government encouragement of “clean” and renewable energy technologies.¹¹⁸

63. Likewise significant, Rates Analyst Adam J. Heinen expressed the view that even in the event of an increase in Corporate Average Fuel Economy (“CAFE”) standards for automobiles, any reductions in consumption that follow from increased fuel efficiency will be outpaced by an increase in overall miles traveled by Minnesotans.¹¹⁹ Mr. Heinen opined that raising CAFE standards will not reduce demand for the petroleum products transported by the LSr Project.¹²⁰

64. Similarly Rates Analyst Bryan J. Minder expressed the view that potential, future recommendations from the Minnesota Climate Change Advisory Group, the Midwest Governor’s Climate Change Group or the Intergovernmental Panel on Climate Change were simply too indefinite to be analyzed under the Department’s long-range demand forecasts.¹²¹

65. The DOC reviewed the impact of alternative fuel sources and technologies as part of its analysis of demand for refined petroleum products.¹²² The DOC noted that, at best, adoption of new alternative energy technology would slow the growth in demand for refined petroleum products, but not reduce demand below current levels.¹²³

C. Demand Impact of Enbridge’s Promotional Activities

66. Enbridge has not undertaken any promotional activities that would increase demand for crude oil supplies to Minnesota or the surrounding region.¹²⁴

D. Projections of Current and Planned Facilities to Meet Demand

67. The Lakehead System is the only pipeline system that now connects Western Canadian oil production with the states of the Upper Midwest. Further, the Lakehead System is the shortest pipeline route to connect this oil production to Minnesota’s refinery markets.¹²⁵

¹¹⁸ See, *Preliminary Climate Change Action Plan*, at 1-2 (February 1, 2008) (http://www.state.mn.us/mn/externalDocs/Commerce/Preliminary_Climate_Change_Action_Plan_020508104330_MN-CCAP%20Final%202-1-08.pdf).

¹¹⁹ Ex. 211 at 12-13.

¹²⁰ Ex. 211 at 13.

¹²¹ Contested Case Hearing Transcript, at 46.

¹²² Ex. 208 at 28-30.

¹²³ Ex. 208 at 30.

¹²⁴ Ex. 200, § 7853.0250 at 6.

¹²⁵ Ex. 200, § 7853.0540 at 2-4.

68. Enbridge's "Mainline System" is operating at or near its oil transportation capacity.¹²⁶

E. Energy Conservation Measures Employed By Enbridge

69. Electrical power for pumping on the Lakehead System constitutes approximately 35 percent of Enbridge's total operating budget for this system.¹²⁷

70. Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System,¹²⁸ and employs a variety of measures to reduce the amount of energy that its own facilities consume.¹²⁹

F. Comparing the LSr Project to Alternative Methods of Meeting Demand

1. The truck transport alternative

71. Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System,¹³⁰ and employs a variety of measures to reduce the amount of energy that its own facilities consume.¹³¹

72. The United States Department of Transportation, Pipeline and Hazardous Material Safety Administration determined that, in general, truck transportation of oil is significantly more hazardous than pipeline transportation.¹³² For example, the agency projects that transporting crude oil by truck presents a far greater risk – 87.3 times greater – of death than operations which move crude oil by pipelines. Similarly, transporting crude oil by truck is nearly 35 times more likely to result in a fire or an explosion than if this same oil is transported by way of a pipeline.¹³³

73. Transporting 186,000 barrels-per-day of crude oil between Cromer, Manitoba and Clearbrook, Minnesota would require a daily, 700-mile round-trip by a fleet of approximately 3,000 trucks.¹³⁴

¹²⁶ Ex. 200, § 7853.0510 at 1.

¹²⁷ Ex. 200, § 7853.0260 at 1.

¹²⁸ *Id.*, at 1-3.

¹²⁹ *Id.*; Ex. 205 at 4.

¹³⁰ *Id.*, at 1-3.

¹³¹ *Id.*; Ex. 205 at 4.

¹³² Ex. 200, § 7853.0540 at 9, n. 1.

¹³³ Ex. 200, § 7853.0250 at 2-3.

¹³⁴ Ex. 200, § 7853.0540 at 1 and 5-6.

74. There is genuine doubt that there are sufficient vehicles or drivers available to accomplish such a massive daily caravan.¹³⁵

75. Even if transportation of similar quantities of crude oil were possible by truck, the capital and operating costs of such an enterprise compare poorly with the capital and operating costs associated with transporting crude oil by way of the proposed pipeline. The annual operating cost of the trucking alternative would be approximately \$875 million – a figure exceeds the capital costs of the proposed LSR Project.¹³⁶

76. The DOC concurred that truck transportation was a poor alternative to the proposed pipeline due to the higher costs, environmental impacts and increased safety risks associated with transporting this quantity of crude oil by truck.¹³⁷

2. The rail transport alternative

77. Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System,¹³⁸ and employs a variety of measures to reduce the amount of energy that its own facilities consume.¹³⁹

78. Transporting 186,000 barrels-per-day of crude oil between Cromer, Manitoba and Clearbrook, Minnesota by rail car is a proposal that is constrained by real limitations – most particularly the fact that there is no rail service at this time to Clearbrook, Minnesota. Development of this rail service – which would include acquiring land, constructing a rail line and development of terminal facilities in both Cromer, Manitoba and Clearbrook, Minnesota – would require significant capital investment.¹⁴⁰

79. Even if the underlying facilities were available, transporting 186,000 barrels of oil each day by railway, would require a total of 26 trains, of approximately 110 cars each, to move between Cromer, Manitoba and Clearbrook, Minnesota.¹⁴¹ In all, Enbridge projects that a railway operation that included 3,120 tank cars would be required.¹⁴²

¹³⁵ Ex. 200, § 7853.0540 at 10.

¹³⁶ Ex. 200, § 7853.0540 at 10; *see also*, Ex. 200, § 7853.0540 at 13.

¹³⁷ Ex. 208 at 8-9; *compare*, Ex. 200, § 7853.0540 at 10 and 13

¹³⁸ *Id.*, at 1-3.

¹³⁹ *Id.*; Ex. 205 at 4.

¹⁴⁰ Ex. 200, § 7853.0540 at 11.

¹⁴¹ Ex. 200, § 7853.0540 at 7.

¹⁴² Ex. 200, § 7853.0540 at 11.

80. As with a truck transport alternative, it is likely that the annual operating costs of transporting a similar quantity of crude oil by rail, exceeds the overall capital cost of the proposed LSr Project.¹⁴³

3. Pipeline system alternatives

81. Responding to the operational significance of reducing the amount of power consumed by the line, Enbridge's Energy Management Department allocates power to pumps on the Enbridge Mainline System,¹⁴⁴ and employs a variety of measures to reduce the amount of energy that its own facilities consume.¹⁴⁵

82. Transporting crude oil by way of alternative pipeline systems – namely, the Enbridge North Dakota System and the proposed Keystone Pipeline system – were also analyzed.

83. Because of the costs and available service dates associated with these alternatives, the DOC concluded that there were not reasonable alternative pipeline systems to the proposed LSr Project.¹⁴⁶

4. Pipeline route alternatives

84. Enbridge examined alternative routes, but determined that following the route of the existing pipelines in the Lakehead System was the best option.¹⁴⁷

85. By following along the pipeline existing route, the LSr project pipeline can access and use existing pumping station equipment and consume the least amount of new right-of-way of any construction option.¹⁴⁸

5. Pipeline design alternatives

86. Enbridge examined the use of various pipe sizes to deliver the proposed capacity of 186,000 barrels-per-day of oil. Among the alternatives considered by Enbridge was deployment of 16, 20 or 24-inch diameter pipe on the LSr Project.¹⁴⁹

87. In light of the effect that pipeline diameter size had upon such factors as pipeline routing, pump station design, pump station location, system hydraulics and

¹⁴³ *Id.*

¹⁴⁴ *Id.*, at 1-3.

¹⁴⁵ *Id.*; Ex. 205 at 4.

¹⁴⁶ Ex. 208 at 9-10; Ex. 200, § 7853.0540 at 2, 7 and 12.

¹⁴⁷ Ex. 200, § 7853.0540 at 2-4.

¹⁴⁸ *Id.*

¹⁴⁹ Ex. 200, § 7853.0540 at 3.

project costs,¹⁵⁰ Enbridge concluded that a 20-inch diameter pipe was the best choice for the LSr Project.¹⁵¹

88. A 24-inch pipeline design was less favored, because this option added a considerable amount (approximately \$37 million) to the overall project costs, would require construction of larger pump stations and was not well matched to the forecasts of the amount of crude oil that would be transported along the pipeline.¹⁵²

89. Likewise, Enbridge's analysts did not favor a 16-inch pipeline design, because of the comparatively higher operating costs, need for additional pumping power and lack of expandability associated that would be associated with such a design.¹⁵³

90. The DOC concurs in Enbridge's assessment that a 20-inch pipeline design is more suitable than either a 24-inch or 16-inch design alternative.¹⁵⁴

G. Comparing the LSr Project to a No-Build Alternative

1. Operational impacts of the LSr project compared to a no-build alternative

91. The key impact of not building the LSr project is that oil transportation "bottlenecks" in the current system, between Cromer, Manitoba and Clearbrook, Minnesota, will continue, and presumably worsen, as demands for petroleum products increase.¹⁵⁵

92. As noted above, the LSr Project will eliminate the need to halt the Enbridge Mainline System so as to inject light and medium crude oil into the pipeline.¹⁵⁶ Without this stopping and starting, Enbridge asserts that the Enbridge Mainline System will operate at its full annual capacity¹⁵⁷ and recapture the long-haul capacity that is otherwise lost during the batch injection process.¹⁵⁸

¹⁵⁰ *Id.*, at 8.

¹⁵¹ *Id.*, at 4.

¹⁵² Ex. 200, § 7853.0540 at 13, 15; *compare also*, Ex. 200, § 7853.0230 at 3.

¹⁵³ Ex. 200, § 7853.0540 at 15.

¹⁵⁴ Ex. 208 at 9-12.

¹⁵⁵ Ex. 200, § 7853.0540 at 9; Ex. 207 at 8.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

93. Enbridge projects that the net increase in system capacity achieved (over both systems) by completing the LSr project would be 219,000 barrels-per-day.¹⁵⁹

2. Socio-economic impact of the LSr project compared to a no-build alternative

94. The total cost of the LSr Project is estimated at \$125.5 million.¹⁶⁰ Enbridge estimates that nearly 1,000 workers will be required for construction-related tasks along the LSr Project route during the six-month pipeline construction period.¹⁶¹ Because both local workers will be hired and new workers will relocate to the communities along the pipeline route,¹⁶² Enbridge argues that both local communities and area suppliers will enjoy new revenues from an approved project.¹⁶³

95. The LSr project is expected to result an estimated incremental initial tax value of approximately \$3.4 million dollars.¹⁶⁴ Based upon the number of pipeline miles, and the presence of any associated infrastructure, within a particular county, distribution of the incremental increase in taxes will vary among the counties along the LSr Project route.¹⁶⁵

3. Environmental impacts of the LSr project compared to a no-build alternative

a. Addressing specific environmental impacts and risks

96. Throughout its application materials Enbridge concedes that installation of the proposed pipeline will necessitate some disruption of the natural environment, however Enbridge argues that these impacts will be mitigated by pre-construction planning and close oversight during and after the construction phase.

97. For example, the Environmental Mitigation Plan proposed by the Applicant includes a series of testing and inspection regimes – including Hydrostatic testing of discharge water for the presence of contaminants,¹⁶⁶ and filtering techniques so as to limit discharge of solids into local streams, rivers and lakes.¹⁶⁷

¹⁵⁹ *Id.*

¹⁶⁰ Ex. 200, § 7853.0230 at 3.

¹⁶¹ Ex. 1, Tab C at 3-3.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Ex. 209 at 5.

¹⁶⁵ Ex. 207 at 17.

¹⁶⁶ Ex. 200, § 7853.0620 at 1; Ex. 200, § 7853.0630 at 6-7; Ex. 1, Appendix B at 23.

¹⁶⁷ Ex. 200, § 7853.0620 at 1; Ex. 1, Appendix B at 22.

98. These features of the Enbridge Environmental Mitigation Plan are bolstered by the requirements of the accompanying Water Appropriation Permit from the Minnesota DNR and the NPDES Construction Stormwater General Permit, the NPDES Hydrostatic Test Water Discharge Individual Permit and the Construction Dewatering Discharge Permit issued by the Minnesota Pollution Control Agency.¹⁶⁸

99. Daily operation of the completed LSr Project will generate no noise along the pipeline path in the approved right-of-way.¹⁶⁹ There is some noise that is generated by operating the pipeline pump stations. Enbridge pledges to keep this noise level below 40 decibels (when measured at a distance of fifty feet from the pumping station structure) or to any other minimum set by state law.¹⁷⁰

100. Because the pipeline pumps are powered by electricity, and operate as closed systems, under normal operating conditions the LSr Project will not contribute to local emissions into the air.¹⁷¹

101. While petroleum spills are possible during the construction phase – primarily as a result of mishandling petroleum during the refueling of construction vehicles or equipment – Enbridge has a Spill Prevention, Containment and Control Plan to mitigate this risk. For example, among the practices outlined in this plan is that construction equipment will be refueled at least 100 feet from streams or other bodies of water.¹⁷²

102. In order to assure compliance with Enbridge's various environmental plans and conditions imposed by state agencies, Enbridge has retained a team of inspectors to review the progress of pipeline construction and the overall system following the completion of the construction phase.¹⁷³ These inspectors will work alongside, and share information with, inspectors who are gauging compliance with the Agriculture Mitigation Plan ("AMP").¹⁷⁴

¹⁶⁸ Ex. 200, § 7853.0230 at 7-8.

¹⁶⁹ Ex. 200, § 7853.0620 at 4.

¹⁷⁰ *Id.*

¹⁷¹ Ex. 200, § 7853.0620 at 3.

¹⁷² Ex. 200, § 7853.0630 at 6; Ex. 1, Appendix C at 23; *compare also*, Ex. 1, Appendix F (Petroleum-Contaminated Soil Management Plan).

¹⁷³ Ex. 200, § 7853.0630 at 7.

¹⁷⁴ Testimony of Bob Patton, Minnesota Department of Agriculture, Red Lake County Public Hearing Transcript, at 21.

b. Addressing specific impacts and risks to agricultural land

103. The route of the Proposed LSr Project crosses 97.1 miles of agricultural land.¹⁷⁵

104. While Enbridge argues that most of the existing right-of-way will not be impacted by the addition of the proposed LSr project pipeline,¹⁷⁶ and that any agricultural land disturbed during construction is likely to return to productive use soon after construction,¹⁷⁷ installation of a new pipeline in agricultural areas will necessarily result in disruption to soils and crops.

105. Enbridge will reimburse landowners for construction-related crop damage based upon market rate price of the item that is destroyed.¹⁷⁸

106. The Enbridge AMP addresses methods of preserving agricultural land during construction – including proper methods of topsoil stripping and segregation, weed control and prevention of erosion.¹⁷⁹ Further, Enbridge pledges in the Agriculture Mitigation Plan to have these practices separately inspected by independent Agricultural Monitors.¹⁸⁰ While the salaries of these monitors will be paid by Enbridge, the Monitors will report their findings to the Minnesota Department of Agriculture.¹⁸¹

c. Addressing the risks of a petroleum spill

107. While acknowledging if the LSr pipeline is installed, there is a risk that the pipeline might leak petroleum at some time in the future, Enbridge argues that this risk is minimal due to the improvement in pipeline safety records, across the industry,¹⁸² and the measures it undertakes to prevent spills, specifically.

108. The design, construction and any later operation of the LSr Project is subject to oversight by the United States Department of Transportation, Pipeline and Hazardous Material Safety Administration.¹⁸³

¹⁷⁵ Ex. 209 at 3.

¹⁷⁶ *Id.*

¹⁷⁷ *Testimony of Bob Patton*, Kittson County Public Hearing Transcript, at 51.

¹⁷⁸ *Testimony of Mike Harris*, Clearwater County, Public Hearing Transcript, at 42.

¹⁷⁹ Ex. 1, Appendix E; *see also*, *Testimony of Bob Patton*, Marshall County Public Hearing Transcript, at 30-31.

¹⁸⁰ Ex. 1, Appendix E, *see also*, Minn. Stat. § 216E.10 (3)(b) (2006).

¹⁸¹ *Testimony of Bob Patton*, Marshall County Public Hearing Transcript, at 30-31.

¹⁸² Ex. 200, § 7853.0250 at 3.

¹⁸³ *See*, 49 C.F.R. Part 195 (2007); Ex. 200, § 7853.0270 at 2.

109. Under federal regulations, all materials that are used in pipeline construction are inspected for integrity before leaving the factory. Additionally, these items are transported according to special specifications, protected from corrosion during transit and re-tested following installation.¹⁸⁴

110. Enbridge pledges to design and construct the LSr Project according to industry standards for pipe, pipe coating, valves and other materials.¹⁸⁵ Moreover, Enbridge declares that it will subject all field-welded joints to x-ray inspection – an inspection practice that exceeds the requirements of the current regulations.¹⁸⁶

111. The completed system will be hydrostatically tested prior to being placed in service.¹⁸⁷ Additionally, Enbridge has a series of systems to inspect, test and verify the integrity of the pipeline following installation.¹⁸⁸

112. In compliance with federal regulations,¹⁸⁹ Enbridge undertakes periodic preventive maintenance activities. Moreover, the procedures that the Applicant used during the inspection process have been reviewed by the Federal and State regulators.¹⁹⁰ The Minnesota Office of Pipeline Safety frequently monitors maintenance work during onsite inspections.¹⁹¹

113. Enbridge patrols the pipeline route by air, at two week intervals, for a total of 26 times per year.¹⁹²

114. Enbridge operates and manages the Lakehead System from a central control center in Edmonton, Alberta.¹⁹³ While a computerized system is used to ensure that the pipelines are operating properly, the control center is staffed at all times to monitor pipeline performance, initiate shutdown procedures (if necessary) and respond to any emergency conditions.¹⁹⁴

¹⁸⁴ See, e.g., 49 C.F.R. §§ 192.303 – 192.325 (2007); 49 C.F.R. § 195.112 (2007).

¹⁸⁵ Ex. 200, § 7853.0270 at 1.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Ex. 200, § 7853.0270 at 1-6; *Testimony of Mark Sitek*, Red Lake County Public Hearing Transcript, at 64-65.

¹⁸⁹ Ex. 200, § 7853.0270 at 1; *compare*, e.g., 49 C.F.R. § 192.935 (2007); 49 C.F.R. § 192.937 (2007).

¹⁹⁰ Ex. 200, § 7853.0270 at 4.

¹⁹¹ See, *Testimony of Denise Hamsher*, Red Lake County Public Hearing Transcript, at 67.

¹⁹² Ex. 200, § 7853.0270 at 3.

¹⁹³ Ex. 200, § 7853.0270 at 2-3.

¹⁹⁴ *Id.*

115. All Enbridge operations personnel are trained in emergency response, and response crews are stationed in both Thief River Falls and Bemidji, Minnesota.¹⁹⁵

116. Federal regulators have approved Enbridge's emergency response plans; plans that will be amended to include provisions and mapping for the proposed LSr pipeline if it is approved.¹⁹⁶

117. Transporting petroleum through a pipeline, presents fewer safety risks for long-distance shipping than transporting petroleum by truck, rail, barge or tank ship.¹⁹⁷

118. Enbridge considered, but rejected a No- Build Alternative – concluding that no action on the LSr pipeline would spur price spikes for refined petroleum products, negatively impact regional employment opportunities and increase the nation's reliance on less-secure sources for crude oil.¹⁹⁸

119. The DOC concluded that the socioeconomic benefits of constructing the LSr Project outweigh the potential effects on the natural environment.¹⁹⁹ Moreover, DOC concluded that Enbridge plans for, and responds well, to pipeline emergencies that occur.²⁰⁰

120. The DOC concluded that Enbridge's examination of alternatives and conclusions that there was no reasonable alternative to the LSr Project satisfies the rule and was reasonable.²⁰¹

H. The Impact Of The LSr Project On Future Development

121. The LSr Project will contribute to future development in Minnesota.²⁰²

122. Enbridge asserts that the proposed LSr pipeline will provide the resources that are needed in order for Minnesota's refineries to expand, as well as meet an increasing demand for refined products,²⁰³ while making a minimal draw upon regional electric, water or transportation resources.²⁰⁴

¹⁹⁵ *Testimony of Mark Sitek*, Red Lake County Public Hearing Transcript, at 65-66.

¹⁹⁶ *Testimony of Denise Hamsher*, Red Lake County Public Hearing Transcript, at 67.

¹⁹⁷ Ex. 200, § 7853.0250 at 2-3; Ex. 207 at 21-22; Ex. 210 at 8-9.

¹⁹⁸ Ex. 200, § 7853.0540 at 4 and 9.

¹⁹⁹ Ex. 207 at 20.

²⁰⁰ Ex. 207 at 15.

²⁰¹ Ex. 208 at 7.

²⁰² Ex. 200, § 7853.0250 at 6; Ex. 207 at 20.

²⁰³ Ex. 207 at 20-21; Ex. 200, § 7853.0240 at 3.

²⁰⁴ See Ex. 200, § 7853.0640 at 1-8.

I. Conclusions of the Parties and Participants as to Enbridge's CON Application

123. The DOC concluded that Enbridge should be granted a Certificate of Need for the LSr Project.²⁰⁵

124. MCEA argued that the hearing record does not establish that the proposed pipeline project is a superior alternative to receipt of petroleum products from potentially less expensive sources or that the overall consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate.²⁰⁶

III. PIPELINE ROUTING PERMIT

A. Consultation with Stakeholders, Agencies and the Public

125. Environmental analysis, land surveys and consultations with landowners on the project began in late 2006 and have continued to be refined through the present day.²⁰⁷

126. Drawing upon the information it developed from consultations with landowners, and the results of the DOC-led public information meetings, Enbridge filed its Revised Preferred Route and Alignment²⁰⁸ and LSr Project Route Alternatives on October 10, 2007.²⁰⁹ The Revised Preferred Route and Alignment Maps sought approval of a 500 foot route width, centered on the proposed 20-inch LSr pipeline.²¹⁰

127. As part of its application materials, Enbridge identified site-specific construction methods and attendant workspace needs along the project route north and west of Clearbrook, Minnesota.²¹¹

128. While some commentators expressed concern about the breadth of the route requested in Enbridge's application,²¹² the Applicant argues that a 500 foot route width will permit it to harmonize and balance a number of different construction-related objectives.

²⁰⁵ Ex. 207 at 38.

²⁰⁶ See, e.g., MCEA Post-Hearing Reply Comments at 10 (February 8, 2008).

²⁰⁷ See, *Testimony of Paul Meneghini*, Red Lake County Public Hearing Transcript, at 16.

²⁰⁸ Ex. 5.

²⁰⁹ Ex. 4.

²¹⁰ Ex. 8, at 8.

²¹¹ Ex. 6, at 2.

²¹² See, e.g., Written Comments of G. Berbee and A. Peterson.

129. Pointing to the results of the land surveys and various informational meetings, Enbridge contends that a broad route width will provide it the flexibility to accommodate site-specific routing requests from landowners, address unforeseen construction conditions,²¹³ reduce the impacts to environmentally sensitive areas and areas of human settlement,²¹⁴ and implement federally-required pipeline design features.²¹⁵

130. Likewise, a broad permit route will enable the Applicant to harmonize the requirements of three levels of related government permits – those from the U.S. Army Corps of Engineers, the Minnesota Department of Natural Resources and Pollution Control Agency, and County governments.²¹⁶

B. Enbridge's Proposed Route Alternatives

131. In most locations along the proposed pipeline route the LSr Project will require 50 feet of additional permanent easement space and 50 feet of temporary workspace immediately adjacent to the new permanent easement space.²¹⁷

132. The 50 feet of new permanent easement space is required to provide a 25-foot safety buffer on both sides of the LSR Project pipeline.²¹⁸ The LSr Project will be located 25 feet from the nearest existing pipeline within Enbridge's current pipeline easement space and 25 feet from the edge of the new permanent easement space.²¹⁹

133. The 50 feet of additional temporary workspace is needed for construction-related activities such as stringing and bending pipe, storing excavated material, moving equipment.²²⁰

134. Further, in limited areas, additional temporary workspaces will also be required. At points that are near water crossings or road crossings, or in any location that requires a bore or directional drill in order to install the pipeline, additional

²¹³ See, Ex. 6, at 2-3.

²¹⁴ Ex. 8, at 8.

²¹⁵ *Id.* at p. 9; *compare also*, 49 C.F.R. Part 195 (2007).

²¹⁶ Ex. 200, § 7853.0230 at 7-9; *see also*, *Testimony of Paul Meneghini*, Kittson County Public Hearing Transcript, at 58-59; *Testimony of Cortland Kleven*, Kittson County Public Hearing Transcript, at 37-38 and 57-58.

²¹⁷ Ex. 2.

²¹⁸ Ex. 2.

²¹⁹ Ex. 2.

²²⁰ See, Ex. 1, Tab C, Figures 1.2-1 and 1.3-1.

temporary workspace has been requested.²²¹ A list of these areas is set forth in the Revised Preferred Route and Alignment for the LSr Project.²²²

C. Enbridge's Proposed Route Alternatives

135. Enbridge filed nine route alternatives in order to address environmental and constructability issues that were raised as to the originally-proposed LSr Project alignment.²²³ Those nine Route Alternatives are:

Route Alternative 1: Coulee Crossing Alternative, Mile Post 805-4.²²⁴

136. The coulee crossing alternative shifts the point at which the pipeline would cross a small, frequently dry, streambed approximately 50 feet southwest from the location originally identified in the LSr PRP Application.²²⁵ The alternative minimizes the environmental impact to the unnamed coulee and improves constructability of the project.²²⁶

Route Alternative 2: Donaldson Station Alternative, Mile Post 814.0.²²⁷

137. This alternative deviates from the existing right-of-way southwest of Donaldson Station and crosses under Minnesota Highway 11. The alternative route passes between an existing electrical substation and an abandoned residence, then turns east, crossing under a county road to re-enter the existing right-of-way along existing pipelines.²²⁸ This alternative reduces congestion with existing utilities and pipelines in this area of the Donaldson Station. Further, as initially proposed, there would be insufficient space between the Donaldson Station property, and Minnesota Highway 11, to safely install the pipeline.²²⁹

Route Alternative 3: Farmstead Alternative, Mile Post 822.9.²³⁰

138. This alternative turns south of the existing right-of-way at point that is west of a group of farm buildings and the associated shelter belt.²³¹ The alternative was

²²¹ Ex. 5; Ex. 1, Tab C at 1-3; Ex. 1, Tab C, Appendix A.

²²² Ex. 5.

²²³ Ex. 8, at 10.

²²⁴ Ex. 4, Tab 1.

²²⁵ Ex. 9, at 9.

²²⁶ *Id.*

²²⁷ Ex. 4, Tab 2.

²²⁸ Ex. 9, at 10-11.

²²⁹ *Id.* at 11.

²³⁰ Ex. 4, Tab 3.

²³¹ Ex. 10, at 9.

developed at the request of the landowner, so as to minimize the impact on the landowner's structures and shelter belt.²³²

Route Alternative 4: Farmstead Alternative, Mile Post 831.3.²³³

139. This alternative crosses under the existing pipeline at a point northwest of farmstead buildings and tree shelter belts located at Mile Post 831.3.²³⁴ The LSr pipeline would then run along the north side of the existing right-of-way and then cross under the right-of-way at a point southeast of the Farmstead buildings and shelter belt.²³⁵ Because there is insufficient space between the south side of the existing right-of-way, and the farmstead that is located at Mile Post 831.3, this alternative was developed to reduce impact to the farmstead property.²³⁶

Route Alternative 5: Revised Middle River Alternative, Mile Post 836.0.²³⁷

140. This alternative will employ a horizontal directional drill to cross under a private driveway, the Middle River and County Road 4.²³⁸ Because of the close proximity of the driveway, river crossing and the county road at this location, the horizontal directional drill method is a superior alternative to traditional methods of construction a pipeline path.²³⁹

Route Alternative 6: Snake River Alternative, Mile Post 843.1.²⁴⁰

141. At Mile Post 843.1, the proposed LSr Project pipeline will parallel the southern-most existing pipeline in Enbridge's right-of-way at a distance of approximately 25 feet.²⁴¹ This alternative minimizes the amount of tree clearing required in this location, because the proposed pathway runs into a clear, workspace area that was established during the installation of a pipeline in 1984.²⁴² Further, this alternative also reduces the length of the proposed pipeline by approximately 300 feet.

²³² *Id.*

²³³ Ex. 4, Tab 4.

²³⁴ Ex. 10, at 9.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ Ex. 4, Tab 5.

²³⁸ Ex. 8, at 11.

²³⁹ *Id.*

²⁴⁰ Ex. 4, Tab 6.

²⁴¹ Ex. 8, at 11.

²⁴² *Id.*

Route Alternative 7: Fen Avoidance Alternative, Mile Post 853.5.²⁴³

142. For this alternative, the proposed LSr Project pipeline will cross under existing pipelines within the Enbridge right-of-way at a point near 60th Street N.W. in Viking, Minnesota, and run parallel to the northern-most existing pipeline at a distance of approximately 25 feet. Approximately 2,700 feet southeast of the initial crossing point, the pipeline would cross back under the existing pipelines, and continue to the southwest, parallel to the existing right-of-way.²⁴⁴ Environmental survey work conducted by Enbridge revealed a sensitive wetland with the characteristics of a calcareous fen. Constructing the pipeline as initially proposed would adversely impact the fen and relocating the pipeline as proposed in this alternative will minimize that impact.²⁴⁵

Route Alternative 8: Red Lake River Alternative, Mile Post 864.2.²⁴⁶

143. For this alternative, the proposed LSr Project pipeline will cross under existing pipelines within the Enbridge right-of-way at Mile Post 864.2. This alternative has the effect of altering the location of the Horizontal Directional Drill (HDD) crossing of the Red Lake River.²⁴⁷ The alternative was proposed so as to avoid existing structures on the southeast side of the HDD river crossing.²⁴⁸

Route Alternative 9: Railroad Crossing Alternative, Mile Post 896.0.²⁴⁹

144. This alternative alters the point at which the project crosses from the north side of the existing right-of-way to the south side of the existing right-of-way. This alternative improves the constructability of the proposed pipeline by avoid existing utility poles and providing a larger area for temporary workspace to affect the railroad crossing at Mile Post 896.²⁵⁰

145. As memorialized in an Order dated November 30, 2007, the PUC accepted all nine route alternatives.²⁵¹

²⁴³ Ex. 4, Tab 7.

²⁴⁴ Ex. 8, at 12.

²⁴⁵ *Id.*

²⁴⁶ Ex. 4, Tab 8.

²⁴⁷ Ex. 9, at 11.

²⁴⁸ *Id.*, at 11-12.

²⁴⁹ Ex. 4, Tab 9.

²⁵⁰ Ex. 9, at 11.

²⁵¹ See, *In the Matter of the Application of Enbridge Energy for a Route Permit - Southern Lights Pipeline*, Docket No. PL-9/PPL-07-360, Order Accepting Items and Extending Deadlines (Nov. 30, 2007) (<https://www.edockets.state.mn.us/EFiling/ShowFile.do?DocNumber=4854127>).

D. Enbridge's Assessment Pipeline Route Selection Under Minn. R. 7852.1900

1. Impact upon human settlement, existence and density of populated areas, existing and planned future land use, and management plans

146. The LSR PRP Application includes an Environment Assessment Supplement which details areas of human settlement, and the population density of those areas, along the proposed route. Municipalities located within one mile of the route are identified in Table 3.1-2.²⁵²

147. In Table 4.3.5-1 of the Application, Enbridge has identified 198 structures (residences and commercial buildings) located within 500 feet of the construction work area.²⁵³ Possible construction impacts are noted in the application materials and Enbridge has outlined a series of steps to control dust near residences.²⁵⁴ Further, Enbridge declares that construction activity will generally be limited to daylight hours so as to limit the noise level impacts that are associated with construction.²⁵⁵

148. The points at which the proposed route intersects a public road – something that occurs 134 times along the proposed route – are identified by jurisdiction²⁵⁶ and by milepost²⁵⁷ in the application materials. Similarly, the application materials detail the number and location of rail crossings.²⁵⁸

149. Current land use along the proposed route is identified and classified as open land, forest lands, agricultural lands, developed lands or wetlands-open water.²⁵⁹ Tellingly, the amount of “developed land” that is affected by pipeline construction is .7 percent of the total land affected by the project.²⁶⁰

150. Data from the Minnesota Geological Survey and the Minnesota Department of Health's water well information database, reveals only one domestic well within 200 feet of the pipeline route.²⁶¹

²⁵² Ex. 1, Tab C, at 3-3.

²⁵³ Ex. 1, Tab C, Table 4.3.5-1.

²⁵⁴ Ex. 1, Tab C, Section 4.3.5.

²⁵⁵ *Id.*

²⁵⁶ Ex. 1, Tab C, Table 4.3.6-1.

²⁵⁷ Ex. 1, Tab D, Appendix D.

²⁵⁸ Ex. 1, Tab C, Table 4.3.6-2.

²⁵⁹ Ex. 1, Section 4415.0140, at 2.

²⁶⁰ Ex. 1, Tab C, Table 4.2-1.

²⁶¹ Ex. 1, Tab C, Section 8.3.3.

151. Enbridge continues to search for the location of additional, non-registered wells, if any, within 200 feet of the pipeline route.²⁶²

152. During public hearings, an Enbridge representative confirmed that if cased wells are later discovered within the 150 foot setback area along the pipeline route, Enbridge will, at its expense, either adjust the location of the pipeline or relocate the well to a different part of the property outside of the setback area.²⁶³

153. Enbridge's survey and easement processes include providing landowners with a pre-printed checklist of important features and characteristics of the landowner's property – including the location of wells. Enbridge uses such individualized checklists when conferring with landowners and making alignment and work space decisions along the pipeline route.²⁶⁴

2. Impact upon the natural environment, public and designated lands; including, natural areas, wildlife habitat, water and recreational lands²⁶⁵

154. Enbridge has assembled a thorough catalogue of the topography, soils, habitats, ecological systems and water resources traversed by the LSr pipeline route.²⁶⁶

155. The proposed pipeline route crosses two state-designated canoe and boating routes²⁶⁷ and comes within ½ of a mile of a state wildlife management area.²⁶⁸ Any impacts upon water crossings can be mitigated by implementation of the EMP.²⁶⁹

156. Vegetation cover will be removed from the right-of-way and temporary workspace areas during construction, but restored following the completion of construction.²⁷⁰

157. Similarly, Enbridge representatives testified that they recognize the aesthetic value and sheltering benefits ornamental trees; and pledged that the Applicant

²⁶² *Id*; *Testimony of Michael Harris*, Pennington County Public Hearing Transcript, at 39-40; *compare also, Testimony of Paul Meneghini*, Pennington County Public Hearing Transcript, at 40-41.

²⁶³ *Testimony of Michael Harris*, Pennington County Public Hearing Transcript, at 40.

²⁶⁴ See, Ex. 12; Marshall County Public Hearing Transcript, at 25-26.

²⁶⁵ Minn. R. 7852.1900 (3)(B) (2007).

²⁶⁶ Ex. 1, Section 4415.0145; Ex. 1, Tab C, Sections 2, 5, 6, 7, 8, 9 and 11.

²⁶⁷ Ex. 1, Tab C, Section 11.1.

²⁶⁸ Ex.1, Tab C, Section 11.1.2.

²⁶⁹ Ex. 1, Tab D, Appendix B at 10-13.

²⁷⁰ Ex. 1, Section 4415.0145, at 4; Ex. 1, Tab D, Appendix B, Section 7.7, at 28.

will hire consultants, if necessary, to accurately appraise the value of any trees taken during the construction process.²⁷¹

158. Installation of the pipeline will occur below ground, generally, at a depth of 10 feet. For most of the pipeline route, this depth is above the water table.²⁷²

159. Enbridge has detailed the measures it will use to prevent groundwater contamination and disruption to water resources in the accompanying Spill Prevention, Contaminant and Control Plan and the Environmental Mitigation Plan.²⁷³

3. Impact upon lands of historical, archeological or cultural significance²⁷⁴

160. Enbridge's review of files from the Minnesota State Historic Preservation Office has revealed one site of archeological significance within the proposed construction corridor.²⁷⁵ Any routing permit issued by the Commission should condition installation on measures to avoid, minimize or mitigate adverse impacts to this site.²⁷⁶

4. Impact upon economies within the route including agricultural, commercial or industrial, forestry, recreational and mining operations²⁷⁷

161. Approximately 1,177 acres of agricultural land, 44 acres of timber and 9.8 acres of developed land (including both residential and commercial properties), will be disturbed during construction and installation of the LSr pipeline.²⁷⁸

162. Under the accompany mitigation plans, Enbridge has pledged to compensate (or provide other value) to landowners for damage caused by construction activity, installation-related crop loses, damage to drainage systems, clearing of otherwise merchantable timber or impacts to gravel deposits.²⁷⁹

163. The impact of pipeline construction upon roads and transportation resources is likely to be minimal. Construction disturbances at open-cut road crossings

²⁷¹ *Testimony of Michael Harris*, Pennington County Public Hearing Transcript, at 40; see also, *id.* 43-51.

²⁷² Ex. 1, Section 4415.0145, at 5.

²⁷³ Ex. 1, Section 4415.0145, at 5; Ex. 1, Tab C, Section 9; Ex. 1, Tab D, Appendix C.

²⁷⁴ Minn. R. 7852.1900 (3)(C) (2007).

²⁷⁵ Ex. 1, Section 4415.0145, at 7; Ex. 1, Tab C, Section 10.1.

²⁷⁶ Ex. 1, Section 4415.0145, at 7.

²⁷⁷ Minn. R. 7852.1900 (3)(D) (2007).

²⁷⁸ Ex. 1, Tab C, Sections 3.2.4, 4.2 and 4.3.

²⁷⁹ Ex. 1, Tab C, Section 3.2.4; Ex. 1, Tab C, Section 4; Ex. 1, Tab D, Appendix E; see also, *Testimony of Paul Meneghini*, Marshall County Public Hearing Transcript, at 43-44; *Testimony of Jerrid Anderson*, Red Lake County Public Hearing Transcript, at 43-44

will typically be limited to one day. Further, Enbridge pledges that, with the exception of brief periods during the process of laying the new pipeline, it will maintain at least one traffic lane, or establish a detour, on the roads where construction activities occur.²⁸⁰

164. Additionally, during the public hearing hearing in Oklee, Minnesota, representatives of Enbridge pledged, that to the extent feasible, heavy construction-related loads will be transported on state trunk highways rather than on lower capacity county highways and townships roads.²⁸¹ Likewise, Enbridge stated that it will provide highway officials in the affected counties a 30-day advance notice of the start of construction.²⁸²

5. Pipeline cost and accessibility²⁸³

165. In 2006 U.S. dollars, Enbridge has estimated the cost of the Minnesota portion of the LSr project to be \$125.5 million.²⁸⁴

166. Access to the pipeline right-of-way will be from either public roadways or approved access roads.²⁸⁵

6. Use of existing right-of-way and right-of-way sharing or paralleling²⁸⁶

167. With the exception of a few discreet instances, where the site-specific conditions made placement of the pipeline in the existing right-of-way inappropriate,²⁸⁷ Enbridge has proposed to use the south-western edge of the right-of-way as the pathway for most of the LSr project.²⁸⁸ Enbridge proposes to leverage “co-location” on the existing right-of-way throughout its suggested route.

7. Impact upon natural resources and features²⁸⁹

168. The topography of the proposed pipeline route is characterized by gently rolling till plains.²⁹⁰

²⁸⁰ Ex. 1, Tab C, Section 4.3.6, pp. 4-6.

²⁸¹ Red Lake County Public Hearing Transcript, at 37-41.

²⁸² *Id.* at 39.

²⁸³ Minn. R. 7852.1900 (3)(E) (2007).

²⁸⁴ Ex. 1, Section 4415.0115, subp. 4, D.(3), at 2; *see also*, Ex. 200, Section 7853.0230.

²⁸⁵ Ex. 1, Tab D, Appendix B, Section 2.1, p. 3.

²⁸⁶ Minn. R. 7852.1900 (3)(F) (2007).

²⁸⁷ Ex. 1, Tab C, Section 2.3.1, p. 2-3.

²⁸⁸ *Id.*

²⁸⁹ Minn. R. 7852.1900 (3)(G) (2007).

²⁹⁰ Ex. 1, Tab C, Section 5.1.

169. The elevation of the LSr pipeline route varies from a low point of 766 feet above sea level in Kittson County to a high point of 1,369 feet above sea level in Clearwater County.²⁹¹

8. The extent to which human or environmental effects are subject to mitigation by regulatory control and by application of the permit conditions for pipeline right-of-way preparation, construction, cleanup, and restoration practices²⁹²

170. If approved for a pipeline routing permit, the LSr Project will be subject to a pyramiding series of regulatory controls – beginning with the Commission’s requirements and continuing with further restrictions regulating road crossings, water crossings, water discharge, protection of endangered species and protection of sites of historical significance.²⁹³

171. Enbridge has also developed substantial environmental and impact mitigation plans as part of the Environmental Assessment Supplement to the LSr PRP Application.²⁹⁴ Compliance with these mitigation plans²⁹⁵ should be a condition of a routing permit issues for the LSr Project.

172. Likewise, imposition of the fourteen permit conditions set forth in Minn. R. 7853.3600, to the LSr Pipeline Routing Permit, will provide still further protection against adverse impacts to humans or the environment.²⁹⁶

9. Consideration of cumulative potential effects of related or anticipated future pipeline construction²⁹⁷

173. The Revised Preferred Route and Alignment filed by Enbridge on October 10, 2007 describes a 500 foot route width that will accommodate either, or both, of the LSr and Alberta Clipper pipelines, if approved by the Commission.²⁹⁸

174. The proposed routes of the LSr and Alberta Clipper Projects are adjacent and parallel.²⁹⁹

²⁹¹ *Id.*

²⁹² See, Minn. R. 7852.1900 (H) and 7852.3600 (2007).

²⁹³ See, Ex. 200, Section 7853.0230 at 7-9; Ex. 207 at 23-24.

²⁹⁴ Ex. 1, Tab C, Appendices B, C, E, F and G.

²⁹⁵ Ex. 1, Tab C, Appendix B at 26-29 and 31; Ex. 1, Tab C, Appendix E at 59.

²⁹⁶ Minn. R. 7852.3600 (A) – (N) (2007). Enbridge requests that the “thirteenth and fourteenth conditions,” relating the preservation of trees, shelterbelts and natural conditions, not be imposed “in a manner that would interfere with the safe operation, inspection, and maintenance of the LSr Project or compliance with federal pipeline safety regulations....” This request is reasonable and consonant with the underlying rule. *Compare*, Minn. R. 7852.3600 (M) and (N) (2007).

²⁹⁷ Minn. R. Minn. R. 7852.1900 (3)(l) (2007).

²⁹⁸ Ex. 5; Ex. 6 at 1.

175. Enbridge states that beyond the proposed LSr and Alberta Clipper Projects, it does not currently have plans for pipeline construction in Minnesota.

10. Consideration of the relevant applicable policies, rules and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05, relating to the location, design, construction or operation of the proposed pipeline and associated facilities³⁰⁰

176. Construction of the LSr pipeline will require consultation with federal, state and local government agencies. Specifically, Enbridge has identified 31 permits, licenses or plans that must be obtained, approved and filed prior to undertaking project-related construction.³⁰¹

177. The record does not support a finding that Enbridge cannot – or will not – abide by federal, state or local requirements relating to the construction of the proposed pipeline.³⁰²

CONCLUSIONS

I. ANALYSIS OF THE NEED FOR THE PROPOSED FACILITY

1. The Public Utilities Commission and Administrative Law Judge have jurisdiction to consider Enbridge's application for a Certificate of Need and a Routing Permit. Minn. Stat. §§ 14.50 and 216B.243.

2. Minn. Stat. § 216B.243 governs certificates of need for large energy facilities, including crude oil pipelines.

3. Minnesota Rules Part 7853 governs the application process and Minn. R. 7853.0130 sets for the showing that must be made in order for issuance of a Certificate of Need to be proper.

4. Under Minn. R. 7853.0130, the Certificate of Need application, alongside accompanying comments and filings, is assessed according to a four-factor test. Those factors are:

- (a) the probable result of denial would adversely affect the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant's customers, or to the people of Minnesota and neighboring states;

²⁹⁹ Compare, Exhibits 5 and 115.

³⁰⁰ Minn. R. Minn. R. 7852.1900 (3)(J) (2007).

³⁰¹ Ex. 1, Section 4415.0165, at 1-2.

³⁰² Compare generally, Ex. 207 at 23-24.

- (b) a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record by parties or persons other than the applicant;
- (c) the consequences to society of granting the certificate of need are more favorable than the consequences of denying the certificate; and
- (d) it has not been demonstrated on the record that the design, construction, or operation of the proposed facility will fail to comply with those relevant policies, rules, and regulations of other state and federal agencies and local governments.³⁰³

A. The Future Adequacy, Reliability, or Efficiency of Energy Supply to the Applicant, to the Applicant's Customers, or to the People of Minnesota and Neighboring States

5. Petroleum demand in the West North Central Region, a group of seven states include Minnesota, is expected to rise.³⁰⁴ Specifically, crude oil is in demand because it can be refined into various products that are sought-after in the marketplace; including, gasoline, diesel fuel, aviation fuel, heating oil and asphalt.³⁰⁵

6. While the Minnesota Legislature has established a schedule of emission reductions as state goals,³⁰⁶ the methods by which Minnesota will reach these lower emission levels has yet to be determined. The Legislature has directed certain members of the Governor's Cabinet to develop and submit a "climate change action plan" for the Legislature's review – presumably, so that it may direct the emission reduction process through additional legislation.³⁰⁷

7. The demand for crude oil supplies in Minnesota (and the surrounding region) is not the result of promotional activities undertaken by Enbridge; but rather market demands from domestic oil shippers and refineries.³⁰⁸

8. The Enbridge Mainline System is currently operating at or near capacity.³⁰⁹

9. No existing or planned facilities can meet the future demand without a Certificate of Need.

³⁰³ Minn. R. 7853.0130 (A), (B), (C) and (D) (2007).

³⁰⁴ Ex. 208 at 19 - 24.

³⁰⁵ Ex. 208 at 18.

³⁰⁶ See, Minn. Stat. § 216H.02 (1) (2006).

³⁰⁷ See, Minn. Stat. § 216H.02 (2) (2006).

³⁰⁸ Ex. 200, § 7853.0250 at 6.

³⁰⁹ Ex. 200, § 7853.0510 at 1.

10. The net result of the LSr Project will be an increase in system capacity of 219,000 barrels-per-day. The 186,000 barrels-per-day LSr Project will eliminate the need to halt the system between the upstream portion of the Enbridge Mainline System in Alberta and Cromer, Manitoba to inject the light and medium crudes into the system.³¹⁰ If Enbridge were permitted to transport the now-segregated batches of light and medium density crude oil, along a dedicated pipeline, additional capacity would be realized for all grades of crude oil that are moved on the Enbridge Mainline System.³¹¹ This additional capacity would relieve bottlenecks in the current system.

11. The best conclusion from the record is that a denial of the LSr CON Application would “constrain petroleum supply to Minnesota and surrounding regional markets, leading to higher petroleum prices . . . [which would] adversely affect the future adequacy, reliability, and efficiency of energy supply to the applicant, the applicant’s customers, and to the people of Minnesota and neighboring states.”³¹²

B. A More Reasonable and Prudent Alternative to the Proposed Facility-Pipeline has Not Been Demonstrated By a Preponderance of the Evidence on the Record By Third Parties or Other Persons or Entities

12. Minn. R. 7853.0540 requires an applicant for a certificate of need to provide information regarding alternatives to the proposed project that were considered. Enbridge examined six alternatives to the LSr Project.³¹³

13. No pipeline alternatives were introduced or established by any other person or party.

14. The alternatives considered were no action, trucking, rail transportation, pipeline system alternatives, alternative routes and alternative pipeline designs.

15. Because no action would tend to “constrain petroleum supply to Minnesota and surrounding regional markets, leading to higher petroleum prices,” the no-action alternative is not a more reasonable and prudent alternative.

16. Enbridge reasonably concluded that the Minnesota portion of the highway system between Cromer, Manitoba and Clearbrook, Minnesota could not easily or well accommodate a fleet approximately 3,000 transport trucks each day.³¹⁴

17. Due to the associated costs, environmental disruption and reduced safety, transportation of 186,000 barrels of oil per day by truck is not a reasonable alternative to the LSr Project.

³¹⁰ Ex. 1 at § 4415.0170 at 1.

³¹¹ Ex. 200, § 7853.0240 at 1; Ex. 203 at 9.

³¹² Ex. 208 at 38.

³¹³ Ex. 200, § 7853.0540 at 1-15.

³¹⁴ Ex. 200, § 7853.0540 at 5-6, 10; Ex. 208 at 8-9.

18. Due to the associated costs, environmental disruption and reduced safety, transportation of 186,000 barrels of oil per day by rail is not a reasonable alternative to the LSr Project.³¹⁵

19. The Keystone Pipeline is not a feasible alternative to the proposed LSr project because it does not connect to refinery markets in Minnesota, Wisconsin and Greater Chicago that would be served by the proposed LSr Project.³¹⁶

20. Because following the route of the existing Lakehead System permits Enbridge to use existing pumping station equipment, and requires the least amount of additional new right-of-way, it is a reasonable option and the best alternative.³¹⁷

C. The Consequences to Society of Granting the Certificate of Need are More Favorable than the Consequences of Denying the Certificate

21. The primary benefit of the LSr Project to Minnesota and the surrounding region is improved access to crude oil supplies. The proposed pipeline will fortify the claims of consumers of petroleum products – whether they are a refinery³¹⁸ or a later purchaser of refined products – against broader disruptions in the oil market.³¹⁹

22. The LSr Project will allow the upstream portion of the Enbridge Mainline System to operate at its full annual capacity.³²⁰ This increased crude oil transportation capacity will result in a more stable supply to refineries in Minnesota and the surrounding region.

23. The LSr Project will provide numerous socioeconomic benefits – including increased crude oil supplies, increased tax revenue and significant investments that will spur employment and spending in local communities.

24. Approval of the LSr CON Application will result in significant socioeconomic benefits over both the short and long terms.

25. The negative environmental consequences, such as disruption to cropland, damage during construction and potential oil spills can be mitigated (and in many cases fully remediated), through observance of the various plans accompanying the Enbridge Application.

³¹⁵ Ex. 208 at 8-9.

³¹⁶ Ex. 200, § 7853.0540 at 2.

³¹⁷ Ex. 200, § 7853.0540 at 2-4; Ex. 208 at 12.

³¹⁸ Ex. 207 at 20-21; Ex. 200, § 7853.0240 at 3.

³¹⁹ Ex. 200, § 7853.0240 at 6-7; Ex. 207 at 20-21; Ex. 208 at 34-37; see *a/so* Testimony of Adam J. Heinen, Contested Case Hearing Transcript at 58, 95 and 101-105.

³²⁰ Ex. 1 at § 4415.0170 at 1.

26. The socioeconomic benefits of constructing the LSr Project outweigh the effects of pipeline construction upon the natural environment.³²¹

27. Denial of the LSr CON Application will result in a loss of the potential socioeconomic benefits and would “adversely affect the future adequacy, reliability and efficiency of energy supply to Enbridge’s customers, the people of Minnesota, and surrounding states.”³²²

D. The Design, Construction, and Operation of the Proposed Facility Will Comply with the Relevant Policies, Rules and Regulations of All Other Applicable Agencies and Governments

28. There is no indication in the record that the design, construction or operation of the LSr Project will fail to comply with the relevant policies, rules, and regulations of other state and federal agencies and local governments.³²³

E. Conclusion Regarding A Certificate Of Need For The LSr Project

29. The Public Utilities Commission should grant a certificate of need to Enbridge Pipelines (Southern Lights) L.L.C. and Enbridge Energy, Limited Partnership for the LSr Project.

II. ANALYSIS OF THE PROPOSED ROUTING

A. Regulatory Analysis

30. Minnesota Statutes Chapter 216G governs the routing of crude oil pipelines.

31. A pipeline may not be constructed in Minnesota without a Pipeline Routing Permit issued by the PUC.³²⁴ Minnesota Rules Chapter 7852 provides the detailed requirements that an applicant must meet to receive a Pipeline Routing Permit.

32. Environmental review is a part of the Pipeline Routing Permit process. Under the rules of the Environmental Quality Board (EQB), “any pipeline reviewed under Chapter 4415³²⁵ automatically satisfies EAW and EIS requirements.”³²⁶

³²¹ See, e.g., Ex. 207 at 20-23.

³²² Ex. 207 at 8.

³²³ Compare, Minn. R. 7853.0130 (D) (2007) with Ex. 207 at 24.

³²⁴ Minn. Stat. § 216G.01 (2) (2006).

³²⁵ The Environmental Quality Board formerly governed the pipeline routing process through Minnesota Rules Chapter 4415. Chapter 4415 was subsequently renumbered without substantive changes to Chapter 7852.

33. Under Minn. R. 7852.1900, the pipeline route application, alongside accompanying comments and filings, is assessed according to a ten-factor test. Those factors are:

- (a) Human settlement, existence and density of populated areas, existing and planned future use, and management areas;³²⁷
- (b) The natural environment, public and designated lands, including, but not limited to, natural areas, wildlife habitat, water and recreational lands;³²⁸
- (c) Lands of historical, archeological, and culture significance;³²⁹
- (d) Economies within the route, including agricultural, commercial or industrial, forestry, recreational and mining operations;³³⁰
- (e) Pipeline cost and accessibility;³³¹
- (f) Use of existing rights-of-way and right-of-way sharing or paralleling;³³²
- (g) Natural resources and features;³³³
- (h) The extent to which human or environmental affects are subject to mitigation by regulatory control and by application of the permit conditions contained in Part 7852.3400 for pipeline right-of-way preparation, construction, clean up, and restoration practices;³³⁴
- (i) Cumulative potential effects of related or anticipated future pipeline construction;³³⁵ and,
- (j) The relevant applicable policies, rules, and regulations of other state and federal agencies, and local government land use laws including ordinances adopted under Minn. Stat. § 299J.05, relating to the location,

³²⁶ *Guide to Minnesota Environmental Review Rules*, at 20
(<http://www.eqb.state.mn.us/documents/rulguid3.pdf>).

³²⁷ Minn. R. 7852.1900 (3)(A) (2007).

³²⁸ Minn. R. 7852.1900 (3)(B) (2007).

³²⁹ Minn. R. 7852.1900 (3)(C) (2007).

³³⁰ Minn. R. 7852.1900 (3)(D) (2007).

³³¹ Minn. R. 7852.1900 (3)(E) (2007).

³³² Minn. R. 7852.1900 (3)(F) (2007).

³³³ Minn. R. 7852.1900 (3)(G) (2007).

³³⁴ Minn. R. 7852.1900 (3)(H) (2007).

³³⁵ Minn. R. 7852.1900 (3)(I) (2007).

design, construction, or operation of the proposed pipeline and associated facilities.³³⁶

34. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to human settlements, densely-populated areas and both existing and planned future land uses.

35. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to the natural environment, public lands and designated lands – including natural areas, wildlife habitat, water, and recreational lands.

36. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to lands of historical, archeological and cultural significance.

37. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to agricultural, commercial, industrial, forestry, recreational or mining operations.

38. Enbridge has carefully planned its proposed pipeline so as to minimize costs, consistent with an accessible and safely-operated pipeline.

39. Enbridge has carefully planned its proposed pipeline so as to maximize the use of existing right-of-way and right-of-way sharing or paralleling.

40. Enbridge has carefully planned its proposed pipeline so as to minimize the impacts to natural resources and naturally-occurring features.

41. As the Applicant acknowledges in its submissions, the benefits of the proposed projects can be maximized, and its adverse impacts reduced, by application of certain regulatory controls – including the permit conditions contained in Minn. R. 7852.3600 relating to pipeline right-of-way preparation, construction, cleanup and restoration practice.³³⁷

42. As noted above, Enbridge states that beyond the proposed LSr and Alberta Clipper Projects, it does not have plans for pipeline construction in Minnesota, nor is there other pipeline infrastructure that it could access so as to meet the stated need.

43. Enbridge has carefully planned its proposed pipeline so as to detail and meet the requirements of applicable policies, rules and regulations of local, state and federal agencies – including ordinances adopted under Minn. Stat. § 299J.05 that relate to the location, design, construction or operation of pipeline facilities.

³³⁶ Minn. R. 7852.1900 (3)(J) (2007).

³³⁷ Compare also, Ex. 1, Section 7852.3000; Ex. 200, Section 7853.0230; Ex. 207 at 23-24.

44. The record of this proceeding demonstrates that Enbridge has satisfied the criteria set forth in Minn. Stat. § 216B.243 and Minn. R. 7853.0130.

45. No party or person has demonstrated by a preponderance of the evidence that there is a more reasonable and prudent alternative to the proposed pipeline.

46. The Applicant has conducted an appropriate environmental assessment consistent with Minn. R. 4415.0115 to 4415.0170 and met the requirements for alternative environmental review in Minn. R. 4410.3600

B. Width of the Stipulations of LSr Pipeline Routing Permit

47. Enbridge has addressed all the criteria set forth by Minn. R. 7852.1900.

48. The Commission should grant a Pipeline Routing Permit for the LSr Project. The permit should authorize construction and operation of the LSr Project within the Revised Preferred Route and Alignment and Route Alternatives.

49. The 500 foot wide Revised Preferred Route and Alignment is necessary to provide Enbridge with flexibility to place project infrastructure in the most appropriate manner and to minimize impacts upon landowners and the environment.³³⁸

50. Further a 500 foot wide route and alignment width is needed to permit safe and efficient operation of equipment if construction methods must be changed due to unforeseen developments.³³⁹

51. Any Pipeline Routing Permit issued to Enbridge should include the route alternatives listed above, as they are responsive to site-specific environmental concerns, landowner requests or pipeline constructability issues.

C. Stipulations of LSr Pipeline Routing Permit

52. While there is no evidence in the record to suggest that applicable regulatory requirements will not be met during the construction and operation of the LSr Project, compliance with such policies, rules and regulations should be made an explicit permit condition for the LSr Project.³⁴⁰

53. The Routing Permit should require Enbridge to attain all required local, state and federal permits and licenses, to comply with the terms of those permits or license, and to comply with all applicable rules and regulations.

54. Specifically, the Routing Permit should require Enbridge to comply with the:

³³⁸ Ex. 9, at 6-7; *see also*, Ex. 8 at 8.

³³⁹ *Id.*

³⁴⁰ *See generally*, Ex. 207 at 23-24.

- (a) permit conditions listed in Minn. R. 7852.3600;
- (b) permits listed in Ex. 200, § 7853.0230, as issued by the relevant regulatory agency or local authority;
- (c) mitigation measures developed for the Berry, Carlson, Gunvalson and Kezar properties;
- (d) Enbridge Environmental Mitigation Plan;³⁴¹
- (e) Enbridge Spill Prevention, Containment and Control Plan;³⁴²
- (f) Enbridge Agriculture Mitigation Plan, as approved by the Minnesota Department of Agriculture;³⁴³
- (g) Enbridge Petroleum-Contaminated Soil Management Plan;³⁴⁴
- (h) Enbridge Drilling Mud Containment, Response, and Notification Plan.³⁴⁵

55. The Routing Permit should require Enbridge to confer with the Minnesota Historical Society prior to commencing construction at “Site 21MA39” to determine what mitigation measures can be made to preserve this archeological site. Moreover, the Commission should specify that Enbridge may not excavate at this site until so authorized by the Historical Society.³⁴⁶

56. With regard to depth of cover, Enbridge should be permitted to seek the waivers allowed by Minnesota Law in subdivisions 2 and 3 of Minn. Stat. § 216G.07.

57. The Routing Permit should require Enbridge to assume any additional costs of development that may be the result of installing roads, driveways and utilities that must cross the right-of-way.

58. The Routing Permit should require Enbridge to cooperate with all entities that have existing easements or infrastructure within the route to ensure minimal disturbance to existing or planned developments.

59. Any Finding of Fact that is more properly characterized as a Conclusion is incorporated here by reference.

³⁴¹ Ex. 1, Tab D, Appendix B.

³⁴² Ex. 1, Tab D, Appendix C.

³⁴³ Ex. 1, Tab D, Appendix E.

³⁴⁴ Ex. 1, Tab D, Appendix F.

³⁴⁵ Ex. 1, Tab D, Appendix G.

³⁴⁶ Ex. 200, Section 7853.0610 at 7.

Based upon these Findings of Fact and Conclusions, and for the reasons stated in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATIONS

1. Enbridge's Application for a Certificate of Need for a Crude Oil Pipeline known as the LSr Project should be GRANTED.

2. Subject to the conditions set forth in the Conclusions, Enbridge's Application for a Routing Permit for a crude oil pipeline known as the LSr Project, including the Revised Preferred Route and Alignment, should be GRANTED.

Dated: March 24, 2008

/s/ Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Shaddix and Associates
Transcript prepared, 10 volumes

NOTICE

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Minnesota Public Utilities Commission ("Commission") and the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed according to the schedule which the Commission will announce. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. Oral argument before a majority of the Commission will be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply (if any), and an original and 15 copies of each document should be filed with the Commission.

The Commission will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if one is held.

Further notice is hereby given that the Commission may, at its own discretion, accept or reject the Administrative Law Judge's recommendations and that the recommendations have no legal effect unless expressly adopted by the Commission as its final order.

MEMORANDUM

While the Findings and Conclusions above detail the Administrative Law Judge's analysis in this matter, one point deserves some additional exposition.

A key part of MCEA's opposition to granting a Certificate of Need in favor of the LSr Project, pivots on the meaning of the greenhouse gas control provisions of Minnesota Statutes Chapter 216H. In argument, and its later filings, MCEA asserts that granting the Certificate of Need is at odds with legislative direction to reduce statewide greenhouse gas emissions 15 percent below 2005 levels by 2015, and 80 percent below 2005 levels by 2050.³⁴⁷ This argument is unavailing.

While the Minnesota Legislature has established the schedule of reductions as "goals," the methods by which our state will reach these lower emission levels has yet to be determined. What Minn. Stat. § 216H.02 does require, is that certain designated members of the Governor's Cabinet develop and submit a "climate change action plan" for the Legislature's review – presumably, so that the Legislature can direct the emission reduction process through additional legislation.³⁴⁸ A "preliminary version" of the climate change action plan was submitted on February 1, 2008.³⁴⁹

Likewise important, none of the features of the preliminary plan suggests that the Certificate of Need requirements set forth in Minn. Stat. §§ 216B.243, subd. (3), have been abandoned, repealed or superseded in any way. Indeed, the preliminary plan recommends pursuing the hoped-for reductions in greenhouse gas emissions through government encouragement of "clean" and renewable energy technologies.³⁵⁰

For our purposes, in this case, it suffices to say that government encouragement of renewable energy technologies does not amount to a prohibition of, or restriction upon, the development of oil pipeline facilities. For this reason, until Chapter 216B is modified or repealed by the Legislature, its multi-factor analysis continues to be the order of the day.

E. L. L.

³⁴⁷ See, Minn. Stat. § 216H.02 (1) (2006).

³⁴⁸ See, Minn. Stat. § 216H.02 (2) (2006).

³⁴⁹ See, Letter of Director Edward Garvey and Commissioner Brad Moore (February 1, 2008) (http://www.state.mn.us/mn/externalDocs/Commerce/Letter_for_preliminary_climate_change_action_plan_020508104727_MPCA-MDC%202-1-08.pdf).

³⁵⁰ See, *Preliminary Climate Change Action Plan*, at 1-2 (February 1, 2008) (http://www.state.mn.us/mn/externalDocs/Commerce/Preliminary_Climate_Change_Action_Plan_020508104330_MN-CCAP%20Final%202-1-08.pdf).